

Public Meeting

**Framework Convention on
Tobacco Control (FCTC)**

**March 8, 2001
San Francisco, California**

Dr. Thomas Novotny, Deputy Assistant Secretary for International
and Refugee Health, U.S. Department of Health and Human Services

I am Assistant Surgeon General, Thomas Novotny. I am the Deputy Assistant Secretary for International and Refugee Health at the U.S. Department of Health and Human Services. On behalf of the Department and other federal agencies that are involved in the Framework Convention on Tobacco Control (FCTC), I would like to welcome you all to this public meeting. The purpose of this meeting is for us in the federal government to listen to your views on the tobacco control issues that may be included in the FCTC and the latest proposed provisions included in the co-called Chairman's Text.

The U.S. delegation to the FCTC negotiations, which I chair, develops its positions through an interagency process. Many federal agencies, some of which are represented here today, meet, sometimes weekly, to discuss the FCTC and decide what positions the U.S. delegation should take. The views of many

groups and individuals who will speak at this meeting form part of the information that the interagency group takes into account. We are here today to listen to your views, rather than to present the government's views.

The member states of the World Health Organization have unanimously adopted resolutions calling for negotiations of an FCTC. The United States joined with the other 190 member states in supporting these negotiations. The negotiations are intended to result in an international agreement to address the global problem of tobacco use. The ultimate goal is to reduce the use of tobacco around the world and cut the deaths and disease that it causes.

Under WHO sponsorship, two working group meetings were held in 1999, in October and March, to discuss proposed elements that may be included in the FCTC. Then, an Intergovernmental Negotiating Body was established to negotiate the text and the related protocols. The first meeting of the negotiating body was held last October in Geneva. The second meeting is scheduled for the end of April and early May of this year. After the first meeting, the Chairman of the Negotiating Body, Ambassador Celso Amorim of Brazil, synthesized the comments made

during the meeting and prepared a Chairman's Text. This text will form the basis of the next round of negotiations.

Your input is very important to help us understand the impact of the proposed provisions on health, the economy, and trade, as we prepare for the second negotiating body meeting. We hope to hear from a diverse group of speakers today, ranging from health advocacy groups, manufacturers, retailers, state and local governments, and researchers. And I want to thank you all for coming today. I know we will have people drifting in as the morning goes on, and we've had about thirty or so people register to speak, so we hope that there will be a good turnout.

We had a similar meeting about a year ago in Washington. But, because this hearing is in San Francisco, of course, it will be somewhat different, because San Francisco is remarkably different from Washington. We came here to get away from Washington and to hear directly from people who we don't usually hear from.

I'd like to introduce my colleagues here on the stage with me. Dr. Larry Green is from the Office on Smoking and Health in the Centers for Disease Control and Prevention, which is part of the Department of Health and Human Services. This agency is the

lead agency on the technical aspects of tobacco and health. John Sandage is from the State Department. He is our very able expert on treaty-making and is the second from the end. Tamara Light, to my left, is with the Bureau of Alcohol, Tobacco, and Firearms in the Treasury Department. She is an expert on smuggling, or rather the prevention of smuggling. Les Simon from the Commerce Department, at the end, advises us on the business point of view and on economic issues related to tobacco.

I would like to thank the staff from my office and from the Centers for Disease Control, who came here from Atlanta, who are providing support for this meeting. We request that you ask them - and they're outside in the hallway - rather than any of us here on stage, for any logistical issues or questions that you may need to pursue during the hearing.

In addition to your oral statements, we need you to submit your written comments. If you do not have them with you, please submit them by regular mail or email. You can hand your statements to the people at the registration desk today, and we'll be accepting written comments until March 15. The email and regular addresses are in the handouts that you can get at the front of the auditorium.

In addition, a transcript of this hearing will be made public and posted on the CDC's website, as was the transcript of last year's meeting. Comments that are submitted will also be posted on the website. The website address is in the handout.

To help assure a fair opportunity for everyone to participate in this hearing, we'll be using the following procedures. I'll be responsible for enforcing these.

Each oral statement will be limited to 5 minutes - 5 minutes - so that we can hear from the greatest number of participants. You can include additional comments in your written statement, however, and be assured that we will be considering all written comments in addition to the oral ones.

We will hear from people in order, according to the numbers that you were given when you checked in. If you miss your place in order, check with the staff at the registration table. We'll have time at the end to take additional speakers.

We ask that you sit at the tables in groups of three, and we have two tables. We will hear from the first three speakers and then perhaps ask them some questions. They can leave the table when all three are finished. While the second group of

three is speaking, the third group can quietly take seats and wait their turn at the table that has been vacated. This procedure should allow for a minimum of wasted time between groups.

I will be officiating, and if I have to leave briefly, Larry Green will be in charge.

So, now, if I could ask the speakers with numbers 1 through 3, please sit at the table on the left, your left, and numbers 4 through 6, please sit at the table on your right. Speakers 7 to 9 should be ready to come to the table on the left after the first group leaves.

I'll ask each speaker to introduce yourself by name and organization at the beginning of the your presentation. I'll then push the timer button, and you'll have 5 minutes to speak. The light will be green when you begin. When the light turns yellow, you'll have 1 minute remaining, and when the light turns red, your time is up. After all three of you have spoken, those of us on the stage will have 2 minutes to ask any questions that may be necessary. At this hearing, we're here really to listen and not to explain our position, and therefore, this is not an

opportunity for you to ask questions of us during the hearing itself. We want to understand your comments.

At the end of the session, we'll take a break for about an hour. That should be around the noontime. We'll announce the length of the break when it begins. When we return from the break, the delegation will be available for informal discussions with anyone who wishes to meet with us. This period will last for a half an hour or so, depending on the demand.

On the issue of breaks, we don't plan any official breaks during the session, but members of the panel may leave the stage briefly. So as long as three of us are here, then we'll continue with the public commentary as planned. So, this procedure should facilitate the smooth flow of the session.

So now that the first group of speakers is seated, we'll begin with number 1, and please state your name and organization. And you can do that from the table. You've got microphones there.

Charlie W. Shaeffer, Jr., M.D., Chairman, American Heart Association, Tobacco Issues Subcommittee

My name is Charlie Shaeffer. I'm a cardiologist from Palm Springs. I chaired the Public Policy Subcommittee until last year, and now chair the Tobacco Issues Subcommittee of the American Heart Association. Tobacco use is a growing threat to global public health, and it must be managed from a global health perspective. The World Health Organization is the body that should be responsible for this work. Today, tobacco products account for 3 million deaths worldwide each year. By 2025, that number is expected to rise to 10 million per year. Increasingly, the burden of tobacco-related death and disease is being borne by developing countries. By 2025, more than 70 percent of the anticipated 10 million tobacco-related deaths will occur in developing countries. The American Heart Association strongly supports tobacco control efforts internationally, including ending U.S. government support for tobacco interests overseas and reducing harmful U.S. tobacco company behavior abroad, especially marketing practices that target children.

The American Heart Association firmly believes that protection and promotion of public health should provide the sole basis for any and all provisions in the World Health

Organization's Framework Convention on Tobacco Control. The world needs a strong, enforceable Convention that holds tobacco companies accountable for their international actions and supports global governments in their efforts to protect and promote public health.

Several provisions in the Chairman's Text of the Framework Convention on Tobacco Control, henceforth known as FCTC, raise serious concerns for the public health community. One such provision of particular importance states that tobacco control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade. This allows tobacco products to be subject to the same trade agreements and rules as any other product, and thus places tobacco control measures in jeopardy. This language is unacceptable and should be modified.

The American Heart Association continues to be appalled that the Philip Morris Company already makes more profits selling cigarettes abroad than in the United States. R.J. Reynolds and Brown and Williamson will soon follow suit. Between 1986 and 1996, U.S. cigarette exports grew by 260 percent and now account for nearly 30 percent of all

domestic cigarette production. Nearly 40 percent of these exports are now destined for Asia.

Historically, U.S. governmental agencies and members of Congress have assisted U.S. tobacco companies in their efforts to expand the export of tobacco products beyond our borders, including supporting advertising, marketing, and promotion around the world.

Previous administrations have issued formal trade threats under section 301 of the Trade Act of 1974 to force other nations to import U.S. tobacco products and to weaken foreign health laws that would reduce tobacco use. Thankfully, in recent years, under the leadership of Representative Lloyd Doggett and others, Congress has taken steps to ban the use of U.S. funds to promote tobacco exports overseas.

Tobacco currently addicts millions of children and ravages global populations. Two months ago, former President Clinton emphasized the importance of placing public health interests before that of trade concerns by issuing an executive order prohibiting the federal government from promoting the sale or export of manufactured tobacco products. It is important that not only the United States, under its new administration,

continue in this policy, but that all nations strive to do the same.

The Chairman's Text also recognizes that developed country parties that export manufactured tobacco products have a special responsibility to provide technical support for developing country parties to strengthen the latter's national tobacco control programs. It states that developed countries should voluntarily set up a grant program for this purpose. Given this "special responsibility" of tobacco-exporting countries, we believe that the grant program should be mandatory rather than voluntary and should be based upon a "polluter pays" principle.

It is incumbent upon the convention to formulate a comprehensive international tobacco control policy that spans a broad spectrum of issues, including the formulation of agreements related to tobacco prices, passive smoking, advertising, promotion and sponsorship of tobacco products, regulation of the manufacture and labeling of tobacco products, tobacco use prevention programs, tobacco cessation programs, and a number of other important initiatives.

According to the Chairman's Text, the draft language also states that the provisions of the convention should be

recognized as minimum standards and that parties are encouraged to implement measures beyond those required by the convention. We agree that not only should the FCTC - all right, thank you very much.

David Greenberg, Senior Vice President of Corporate Affairs,
Philip Morris International

I'm David Greenberg. I'm Senior Vice President, Corporate Affairs, for Philip Morris International, and I'm here speaking on behalf of Philip Morris International and our sister company, Philip Morris USA.

At a global level, we share the WHO's desire to make progress on the Framework Convention and on many of the issues addressed in the Chair's Text released last month. And at a member state level, we remain committed to working with governments, civic and international organizations, and the public health community to find sensible and effective regulatory solutions to complex tobacco issues. We believe that strong and effective regulation, including many of the measures in the Chair's Text, will be good for society and good for our companies and employees. Regulation will provide public health benefits on the one hand, and stability and predictability on the other hand. We will know the rules, know that the rules

apply to everyone, and know that compliance with the rules will be monitored and demanded. Moreover, regulation can also provide a framework that would permit and guide the development, evaluation, and marketing of potentially reduced risk products. We believe that the best approach is for the appropriate public health authorities to define the criteria for reduced risk products and to establish standards for communicating to consumers about them.

Our companies urge member states to support many of the provisions of the Chair's Text. We hope the Convention will emphasize provisions that (1) provide consistent government health warnings and other public health information to all consumers; (2) mandate responsible marketing practices for tobacco products; (3) impose reasonable restrictions on public smoking; (4) combat the smuggling and counterfeiting of tobacco products; and (5) develop internationally accepted standards for disclosing and regulating tobacco product ingredients and smoke constituents, as well as addressing reduced-risk tobacco products.

We believe, however, that member states should request modifications of certain provisions in the Chair's Text, because they fail to respect the principle of adult choice. Regulatory

frameworks should balance public health concerns with the right of adults to engage in legal, but harmful, behaviors, and should minimize the potential unintended consequences of certain regulatory provisions. So we don't favor some of WHO's proposed provisions, such as those that would dictate worldwide taxation and encourage rancorous litigation rather than constructive dialogue. And we strongly believe that the provisions dealing with tobacco exports would have the effect of transferring thousands of jobs from countries like the United States to the developing world. These are real, substantive points of disagreement, but we're convinced that a meaningful engagement by all interested parties can result in a workable tobacco treaty.

In summary, we want to join with the WHO and its member countries, including the United States, to confront the challenges of tobacco control policy and to find practical, effective solutions. Together, we can and will meet that challenge. If we speak and listen with respect and share our expertise, we can make progress. We thank you for your attention, look forward to working with you, and would be pleased to answer any questions you have.

Dr. Thomas Novotny

Thank you. I will ask the audience to refrain from any superfluous comments or remarks while the speakers are engaged in their presentation, and if this isn't possible, we will ask to halt the proceedings and re-establish some order. So, I would ask your indulgence to keep remarks from the audience to zero while the speakers are presenting. I think everybody deserves the same level of respect as everyone who is presenting. Next speaker, number 3 please?

Jennifer Williams, Director of Tobacco Control, American Lung Association of the Central Coast; Advocacy Chairperson for the Northern California Chapter of the Society for Public Health Education

Good morning. My name is Jennifer Williams, and I am the Director of Tobacco Control for the American Lung Association of the Central Coast, and I'm also the Advocacy Chairperson for the Northern California Chapter of the Society for Public Health Education. I am privileged to represent both of these organizations today in expressing support for an effective and enforceable WHO Framework Convention on Tobacco Control and to give comments on the chair's draft text.

As a public health educator for the American Lung Association, I have been privileged to be involved in the California Tobacco Control Movement. California's education and advocacy efforts have helped raise public awareness and foster community attitude change. Today, millions of people are effectively protected from secondhand smoke through California Assembly Bill 13, the Smoke-Free Workplace Law. California is also a leader in implementing advertising restrictions and tobacco licensing legislation, both on the local and state levels.

We are proud of the advances we've made in California, but it's only the beginning. Everyone deserves the same protection from secondhand smoke and deceptive advertising that Californians enjoy. The Chair's Text includes some recommendations that are fundamental to effective tobacco control. These include restrictions on tobacco advertising, promotion and sponsorship, strict labeling requirements, regulation of the contents of tobacco products, tobacco product disclosures, tax and price measures, and measures to eliminate tobacco smuggling. These important areas should be comprehensively addressed by protocols negotiated at the same time as the Framework Convention, to provide coverage beyond the preliminary provisions in the draft.

Tobacco advertising must be a priority issue. California's experience has shown that advertising cannot be easily compartmentalized into "over 18" and "under 18" media messages. Messages the industry claims are targeted for adults are extremely appealing to teens and preteens who can't wait to grow up. A message on a billboard is viewed by all who pass it, not just those over 18. Thanks to the Master Settlement Agreement, the tobacco industry can no longer advertise on billboards or use cartoon characters to promote their products in most areas of the United States. Children in developing countries are not afforded these same protections.

It is up to the United States, as the home base of tobacco giant Philip Morris and the world's leader in tobacco control, to take responsibility and ensure the effectiveness of the Framework Convention. This Convention is a powerful tool to protect the people of the world, especially children, from the health effects of tobacco and secondhand smoke. Tobacco use should be treated as any other pandemic, with all appropriate measures being taken to eradicate the disease. We must reach the objective stated in the Chair's Text and "protect present and future generations from the devastating health, social, environmental, and economic consequences of tobacco consumption and exposure to tobacco smoke." Thank you.

Dr. Thomas Novotny

We now have 2 minutes from the panel here to ask any questions.

Male Voice

In your testimony on behalf of Philip Morris, you indicate that you take exception to language in the Chair's draft that would force taxation policies. I guess I didn't read it quite that way. Can you be a little more specific about where you take exception, specifically with the tax discussion in that draft?

David Greenberg

Yes, the idea that, in a world with an incredible array of disposable income differences and price differences, the notion that we can have worldwide tax harmonization just strikes us as not feasible. If you look at the prices of the product and any consumer goods all around the world, they vary by a factor probably of 5 or 10. And so taxation that's based on, say, an ad valorem percentage of two-thirds of the price of the product cannot end up leading to harmony but greater disharmony in terms

of blowing up prices on the high end and not having much effect on the low end. So we just think that trying to have a worldwide regime of taxation is probably not workable.

Let me be quick to add that it's obvious to us, and we recognize that tobacco products are among the highest taxed products in the world, sometimes, often more than 50 percent, sometimes up to 80 percent. Governments are incredibly skillful at making sure that they are taking appropriate revenue from the product, but we don't think the provisions in the Chair's Text seem to add much.

Male Voice

Thank you. I'd like to ask one question of our speaker from the American Heart Association on the treatment of tobacco and nicotine addiction - if you could make a comment on that briefly, what the medical profession's opinion on this is. You didn't mention it, and it's something that I think is -

Charlie W. Shaeffer, Jr., M.D.

I don't think there's any question that, from a personal point of view, as well as the American Heart Association feels

very strongly that tobacco is an extremely addicting drug and that one of the major ways that we're able to conduct successful treatment programs is to treat the addiction head-on. We have perhaps been perceived as being overly emphasizing the kids smoking issue, but we feel very strongly that in order to make an impact on public health, we have to treat this addiction head-on in adults. As Dr. Glantz's paper showed a few weeks ago in *The New England Journal of Medicine*, in California, by a targeted media campaign and taxing, the death rate from heart disease dropped by about 83,000 over a period of 8 years.

Dr. Thomas Novotny

Thank you. We'll need to move on. You folks could then (inaudible) and, again, thank you for all of your comments. We'll start with number 4, please.

Robin Shimizu, Advisory Committee Member, Asian Pacific Partners for Empowerment and Leadership (APPEAL)

Good morning. My name is Robin Shimizu. Although I am the Assistant Chief of the California Tobacco Control Program, I am not speaking on behalf of my organization. I have taken a day of vacation to testify today. I am testifying as an Advisory Committee member for the Asian Pacific Partners for Empowerment

and Leadership, the first national tobacco control network representing Asian Americans and Pacific Islanders, and which has more than 250 organizational and individual members. APPEAL's mission is to prevent and reduce tobacco use among the AAPI community through network development, capacity building, education, advocacy and leadership.

I am also testifying in honor Chris Jenkins, also an APPEAL Advisory Committee member and a local advocate, who would be testifying himself today if he were able. Chris and APPEAL want to see the successful adoption of a strong Framework Convention on tobacco control to protect the world from the scourge of the tobacco industry. As an Asian American, and as a citizen of the United States, I feel strongly that the United States, home to Philip Morris, the largest tobacco company in the world, has an obligation to negotiate the Framework from a global perspective rather than a domestic perspective.

Worldwide mortality from tobacco is likely to rise to about 10 million per year in 2030, with over 70 percent of those deaths occurring in the developing world. Most of those deaths in the developing world will take place in the Asia-Pacific region. This is of great concern to us, not only as global citizens, but also as Asian Americans and Pacific Islanders. We

are the fastest growing group in the United States. We are a very diverse population, with communities across the continental U.S., Hawaii, and Western Pacific. Since nearly two-thirds of us are immigrants, we are very much impacted by what happens, or what devastation tobacco creates, in Asia and the Pacific. Pacific Islanders, especially in Micronesia, have some of the highest use of tobacco for both males and females. In Palau, tobacco use with betelnut is up to 70 percent. Vietnamese men have the world's highest smoking rate at 70 percent. Here in the U.S., males in certain ethnic Asian American groups, such as Laotian, Cambodian, and Vietnamese, have some of the highest smoking prevalence, nearly approximating the rate in their home countries. As you will see later in my testimony, the tobacco industry is proud of the in-roads they are making in addicting our people here in the United States and also in the countries around the world.

There are a number of very good provisions in the draft. There are a few notable concerns, though. The Framework should take precedence over international trade agreements. The Framework should not be preemptive and should be recognized as a minimum standard. Last, but not least, the Framework should be calling for a total ban on all tobacco industry advertising, promotions, and sponsorship. As currently proposed, the

provision will not change their aggressive global advertising and marketing practices at all. The tobacco industry will adapt and maneuver around the seemingly sound advertising restrictions placed upon them.

In the United States, through the Master Settlement Agreement, the tobacco industry agreed not to advertise on billboards. However, there is a huge loophole that still allows them to advertise on smaller neighborhood billboards, usually seen in our ethnic communities. So, they are still able to advertise without restriction in communities least able to withstand their marketing.

Without missing a beat, the tobacco industry switched their money from billboards to increase their glamorous ads in magazines, targeting our youth and ethnic women. Was it a coincidence that they launched a \$40 million slick and glitzy ad campaign targeting Asian, Latina, and African American women at about the same time they agreed to pull down their billboards and agreed not to advertise to youth? They said they would not advertise in magazines with more than a 15 percent youth readership. Does anyone really believe that the youth do not read trendy magazines, such as *People*, *Glamour*, and *Entertainment Weekly*?

In California, the Attorney General has settled with the tobacco industry for violating advertising restrictions of the MSA. However, in the rest of the United States and in many parts of the world, the provisions of the Framework will undoubtedly go unchecked. Should we trust the tobacco industry to not violate the provisions? I think not. The ban on tobacco industry advertising is not an infringement of free speech, as some have claimed. Now, we actually see them bragging about their increased market shares in Europe and in Asia.

I will end this testimony by quoting some sobering words taken straight from a speech given by Louis Camilleri, Senior Vice President and CFO of Philip Morris on February 22, 2001 in Naples, Florida. "We have just come off a very good year at Philip Morris, and we enter 2001 with good momentum." "We are the leader in American-blend segment and 35 percent of the international market." "In the region's most important market, Japan, we continue to generate terrific growth. Our share climbed to a record 21.4%." "In Malaysia, volume rose 26%." "In Thailand, up 60%." "In Indonesia, volume up more than 100%."

These are sobering statements indeed. As you can see, the tobacco industry is double targeting our people. They are

allowed to advertise, sponsor, and promote their deadly products overseas almost without restraint. Then, they continue to target at our ethnic communities here in the U.S. In creating a legal binding international treaty, we believe that the Framework is an important and necessary step towards truly impacting the global tobacco epidemic. Anything less will play into the hands of the tobacco industry.

Jennie Cook, American Cancer Society, Past Chair, National Board of Directors

I am Jennie Cook. I'm pleased to be here today on behalf of the more than 18 million volunteers and supporters of the American Cancer Society, the nationwide community-based volunteer health organization dedicated to eliminating cancer as a major health problem.

I am a past Chair of the National Board of Directors and have served as a volunteer with the ACS for 36 years. I also chair the committee that oversees the California landmark tobacco control program, which has reduced tobacco use in this state by more than 50 percent since 1988.

I am proud of the American Cancer Society's support for a strong, effective Framework Convention on Tobacco Control. The

Society is keenly aware that tobacco use is not just an American tragedy. It is a global epidemic that demands a global response.

We are greatly encouraged by the progress made at the initial negotiations last fall, and we are delighted to have someone with the expertise and stature of Chairman Celso Amorim guiding development of the Framework Convention. We feel that the Chair's Text marks a promising starting point for negotiating this spring in Geneva. We do have serious concerns about several aspects of the draft, but we believe these can and should be addressed without great difficulty.

Before talking specifically about the Chair's Text, I'd like to share two lessons I've learned firsthand over the years. The first is that it's easy to lose sight of the human stakes involved in tobacco control. In the case of the Framework Convention, millions of lives are literally hanging in the balance. The success of the Convention depends in large measure on keeping everyone focused on these very real lives and the responsibility we all share for the outcome of these negotiations.

The second lesson is that the tobacco industry is the last entity on earth that should be trusted to help set effective tobacco control policy. The industry and its allies will do all they can to distract us from our public health purpose and to mislead us and to divide us. Their timeworn strategy is to argue that they should be partners with us in any effort to protect public health from tobacco. Again and again, in California and as elsewhere, we have learned the hard way that the weak, voluntary approaches that the tobacco industry promotes simply do not work.

I would like to focus my comments on the Chair's Text on two strategic issues: advertising and international trade in tobacco products. These are not the only areas of the Text that need to be strengthened, but they are the areas where U.S. leadership is especially important.

The advertising provisions are among the few disappointing aspects of the Text. We have two fundamental concerns. First, this draft does not respect the global consensus about health authorities that tobacco advertising and promotion stimulate consumption and, therefore, should be prohibited. Instead, the Chair's Text would allow extensive direct and indirect advertising and promotion targeting anyone aged 18 or older. We

are concerned that the U.S. delegation may have promoted the weak approach reflected in this draft, because it fears that stronger measures would be subject to Constitutional challenge in U.S. courts. We respectfully disagree with this approach. We do not believe it would be appropriate for the U.S. effectively to weaken a viable global health standard simply because the U.S. cannot meet the standards at this time. We urge the U.S. delegation to address its unique concern by other means, for example, by seeking an exception in this area for nations facing Constitutional limitations.

Our second major concern with the advertising provisions is that these issues are so central to tobacco control that they should be the subject of a protocol developed and opened for ratification simultaneously with the Framework Convention itself. Waiting until the year 2003 or later to begin developing this protocol would unnecessarily delay progress in the area by years. We are confident that effective advertising and marketing provisions can and will be successfully negotiated as soon as these two fundamental concerns are addressed.

Another major concern about the Chair's Text is that it does not effectively deal with the potential for conflict between tobacco control objectives and trade-related agreements.

There is no longer any doubt that liberalization of trade in tobacco products has boosted smoking rates significantly throughout much of the developing world, causing needless suffering, death, and economic harm. Moreover, the tobacco industry continues to use international trade agreements to argue that various tobacco control measures are prohibited. Whether or not these claims are true, the mere threat of an international trade dispute is usually enough to discourage nations from enacting innovative tobacco control measures. We understand that international trade policy is a sensitive area that some would prefer to avoid. However, we believe this is a serious and growing issue that we can and must face squarely. We are not suggesting anything that would undermine the general rules promoting free trade in goods and services. We are merely suggesting that the Framework Convention apply narrowly tailored, product-specific rules that would serve as limited exceptions to those rules.

This approach follows a well-established practice of developing special trade rules for uniquely hazardous products. International agreements already are in place that address trade-related concerns about hundreds of other products, including small arms, etc. In the environment field alone, more than 20 multilateral treaties already include trade-related

provisions. Using this approach, we believe the Framework Convention could incorporate a number of provisions --

Dr. Thomas Novotny

I'm sorry. I will have to cut you off because of the 5 minutes. We do have your written comments, and we do appreciate it. Thank you very much. Next speaker, please, number 6.

Judith Wilkenfeld, Campaign for Tobacco-Free Kids, National Center for Tobacco-Free Kids

Thank you. I'm Judy Wilkenfeld from the Campaign for Tobacco-Free Kids. I'd like to thank the U.S. delegation and the Department of Health and Human Services for this opportunity to comment on the Chair's Text. We want to encourage the Department to continue this process and to host similar venues across the country. We also want to urge the U.S. to continue constructive leadership and support for the Framework Convention process, which requires a continuation of high-level and dedicated representation from the U.S. and continuing commitment of political and financial support.

Our full analysis of the Chair's Text was provided to you in our written comments, which go through the Text and provide comments and alternative language where appropriate, and I refer you to that for more extended comment.

We do believe that the Chair's Text is an improvement over previous drafts, in terms of its brevity and organization. However, it sets out a series of guidelines and best practices and, unlike specific requirements, guidelines are insufficient to tackle adequately the problems caused by tobacco. Therefore, we recommend that the Convention contain some specific obligations in the areas of advertising, smuggling, product regulation, banning of duty-free and tax-free sales, and the banning of terms such as "light" and "low" that imply reduced risk.

I want to reiterate what my co-panelists have said earlier. Unlike what Philip Morris said this morning, they say they want sensible regulation, which will allow them to continue, mostly unfettered, to market their deadly product. We want a Convention that will effectively and immediately begin to reduce the death, disease, and disability caused by tobacco. As we go forward, let's not forget the industry is in the business to

sell its product. We in the NGO community want to treat and eliminate the diseases that are caused by their product.

The protocols that the Chair identifies as being the most important, advertising, smuggling, and product regulation, we agree are the most important ones that should be negotiated early. However, given the high level of support and agreement for early comprehensive regulation in the area of advertising and smuggling, negotiations in these areas should not be delayed but should be negotiated simultaneously with the Convention.

There are three areas within the Text that we think need major modification: trade, smuggling, and advertising. I will defer to my colleague here on the left for her excellent discussion on advertising, and go through the trade and smuggling arguments, and when I see the red light, I'll stop.

As to trade, the Framework Convention offers an opportunity to adopt narrowly drawn rules to address a unique public health concern raised by the liberalization in trade. Although trade liberalization is generally to be valued, this is not the case for tobacco. Tobacco trade produces more economic harm to new markets than gain. And as she indicated in her testimony, there is ample precedent for creating this exception in international

and bilateral treaties. We therefore recommend the following changes to the Text. Current trade agreements do not provide adequate protection for national tobacco control measures. The history of the interpretation of international treaties by WTO indicates this. Therefore, we recommend the removal of Guiding Principle 5, which is based upon Provision 20 in GATT, and replacing it with a statement providing preference to the Convention over and above other treaties when conflict occurs.

Second, the Convention should not act as a restraint on national tobacco control action but serve only as a floor. Countries in fact should be encouraged to take stronger actions.

Third, the Convention, unlike international trade treaties, should not establish an onerous burden of proof to the enactment of national tobacco control measures or to the challenges of another state regulation, because tobacco regulation attempts to curtail the proven health consequences of tobacco use. These should not fail because they can't meet the high standards that like the industry would like to set up, say 100 percent scientific consensus. Therefore, we would also recommend the inclusion of a precautionary principle type of provision.

Finally, the Convention should contain a provision similar to the requirement that the U.S. has imposed upon itself via the Doggett Amendment and the Executive Order that has been issued recently by the President, that no state will attempt to weaken or undermine the tobacco control measures of another state or to promote the export of the use of tobacco in another state.

The second issue which we think demands some beefing up in the Text is the area of smuggling. Smuggling represents more than a law and order or economic issue. It has public health implications. It undermines tax and price policy, limiting money available for tobacco control. It's used by the companies as an argument against tax proposals, tax being one of the most effective measures that can be put into place. And this argument lies rather badly in their mouths, given their proven complicity in smuggling. Smuggling provides the best opportunity for international cooperation and received enormous support from the delegates. In addition to the good provisions in the Text, we recommend two others - and you'll have to read our statement to find out what those are.

Dr. Thomas Novotny

Thank you very much. Now, any members of the delegation wish to ask questions? John Sandage.

John Sandage

Thank you. I have a question for Ms. Shimizu. You take a somewhat different position from your two colleagues on the panel as regards the question of an advertising ban, and you call for a flat-out ban that we should adopt, which is different than their position. Could you explain to me and to the panel, legally, how you get there. How do we as a panel agree to what the courts have seemed to suggest the Constitution doesn't permit?

Robin Shimizu

That's a difficult question for me to answer, because I'm not a lawyer.

John Sandage

It's a difficult question for us, too, which is why I'd like to know how we get there, in your analysis.

Robin Shimizu

My position is that it's very difficult to write in provisions on advertising - in the framework for advertising, in that the industry, no matter what provision you put in there, so in the case right now, it's saying that you can advertise to adults, the industry will have to advertise to adults and not to children. What we've seen in California is that they will be able to get around any provision or any kind of language that you negotiate with them. And so a total ban, and that is not allowing them to advertise at all, which some countries, I believe, have done, will be the most effective because, even in the case of some of the countries that have done very well in advertising bans or restrictions, they're still able to adapt and get their logos out there. So, in the case of the way the Framework is currently written, we believe that they will still advertise and entice children to their products.

John Sandage

May I ask a follow-up? I'm sorry, but the question, you explained why empirically an advertising ban is important. You didn't explain legally how it's possible.

Robin Shimizu

I'm sorry. I know, and I don't know the answer to your question, legally, but I can defer to my panelists.

John Sandage

Well, your position is different, and I understand that. I was curious about her position.

Judith Wilkenfeld

Well, as to that question, first of all, if the United States objects, any country with Constitutional limitations has an objection to a provision that calls for a total ban, the U.S.'s position, as I understand it, is to call for reservations and partial reservation. So, the U.S. should not stand in the way of the rest of the world that can impose bans from doing so

because of our Constitutional limitations. If so, we can opt out of that one provision, if you all are right about reservations.

Male Voice

Further on the same subject, Ms. Shimizu, the language in the draft refers to targeting of advertising to young people, and our position going into those negotiations was that we should have language that suggests or affirms that the advertising should not appeal to youth. Now, wouldn't that go a long way to closing the loophole you described?

Robin Shimizu

I don't believe so, sir. The reason why is because advertising is very subjective, and what has happened, what we've seen, at least in the United States, they have changed their style. For instance, in the Joe Camel campaign, they have changed the style from Joe Camel's cartoon character to a very trendy, fun, adventurous kind of logo and style about their ads, which is still very enticing. Children as young as 12, 13 still emulate us. They still see these magazines and advertisements, and they will still appeal, no matter what, to our young people.

Male Voice

That's the point, that if the language said that - and we could empirically document what appeals to kids and that is precluded by the FCTC.

Robin Shimizu

I don't know if there's any evidence or any scientist that could tell you what would and wouldn't appeal to young people. We have advertising agencies that are trying to figure what wouldn't appeal to young people, and our best experts in advertising do not know the answer to that question.

Dr. Thomas Novotny

Thank you. I think we'll have to move -

(End of Tape 1)

- speaker number 7, then. Thank you. Introduce yourself first.

Laurent Huber, International Projects Coordination, Action on Smoking and Health

My name is Laurent Huber, and I am acting as the International Projects Coordinator for Action on Smoking and Health, sometimes known as ASH, one of the nation's oldest anti-smoking organizations. ASH is a unique anti-smoking organization because, serving as a legal action arm of the anti-smoking community, it relies principally on legal action rather than conventional education to accomplish its goals. Its staff is primarily legal and has more than 30 years of experience dealing with the tobacco industry, primarily from a legal perspective. This includes finding literally hundreds of legal loopholes in documents like the Multi-State Settlement Agreement, court-ordered settlements, proposed legislation, federal regulations, etc. - problems which can often be overlooked, even by skilled attorneys. This is very important, because the Framework Convention on Tobacco Control is a legal document, which must be very carefully drafted if we are to be sure that its terms will be truly effective and that there will be few, if any, legal loopholes the tobacco industry and its allies can rely upon to impede or delay its implementation.

For this reason, ASH's legal staff has very carefully examined the Chair's proposed text and has made more than two

dozen very specific proposals to change or give suggestions to the language, and I believe you have a copy of those. Some simply clarify the drafters' apparent intent. Others remove troublesome, if not unworkable, terminology. Some proposals add elements and ideas the drafters may not have been aware of. A few proposals try to turn what might otherwise be platitudes into realistic and specific requirements. And, finally, two proposals are related, quite frankly, to preserving the integrity and public image of the FCTC.

Attached, again, you have a summary of each of the 26 proposals. They are in a separate document, and they have suggested changes and accompanying comments with brief explanations. We sincerely hope and respectfully suggest that each one be given careful consideration in the hope that this body will avoid some of the critical mistakes which so often have been made in the past concerning the drafting of documents related to tobacco control. ASH looks forward to discussing any of these individually and in more detail and hope you will feel free to call upon us at any time if we can be of any further assistance.

Finally, ASH urges the U.S. delegation to negotiate the FCTC from the principle that the protection and the promotion of

public health must be the guiding principle for all the decisions and actions concerning the Framework Convention on Tobacco Control.

Since I have some time, I'll just go on over some of the specific. On the trade issue, because tobacco is the only trade product which both addicts and ultimately kills a substantial proportion of its users and imposes huge health cares and other costs on both government and private businesses, the term of this Convention and any of its protocols should take precedence over any other international agreement or trade control measures and govern in any case in which there may be a conflict regarding tobacco products. We feel that some major tobacco exporting countries have used trade policies as techniques to force countries to relax barriers to the import of tobacco products. While relaxation of unnecessary trade barriers may be appropriate with regard to most other products, tobacco is unique, and the mechanisms for challenging trade barriers generally are inappropriate here. Thus, the specific convention regarding tobacco products should take precedence over any general conventions or other agreements regarding trade.

Again, as some other groups, we have some concerns over the ban targeting only people under 18, and one suggestion we had is

prohibiting all forms of direct and indirect tobacco advertising, promotion, and sponsorships targeted at - instead of "targeted at," "having a significant and disproportionate impact on persons under the age of 18." And, any rule based upon targeting would be ineffectual because of the virtual impossibility of putting a subjective element, which is that a specific intent to target children. It is more effective and fair to use as an objective standard any advertising that has both a significant and disproportionate impact on underage children, such as a widely read magazine that has a percentage of underage readership more than twice as high as the national average for magazines. At this point, I'll just let you read the other 26 comments we have. Thank you.

Dr. Thomas Novotny

Thank you very much. Next speaker, number 8.

Dr. Stephen Hansen, American Medical Association Tobacco Control Coalition

Good morning, Mr. Chair and Committee members. I'm Dr. Steve Hansen. I'm a physician who coordinates the American Medical Association Tobacco Control Coalition. The AMA has

submitted their official comments, both in Geneva and in writing again after the Chair's draft.

My comments will be brief. They will be meant to keep your focus on your job as being advocates for the people of the world here, and an important time, to help them throw off the shackles of tobacco addiction. The world would be a better place if Philip Morris were not in it. Think of them as killers for hire who will go anyplace and do anything to enslave adults, children, politicians especially, and their chief sycophants and apologists, the advertising industry. Accordingly, the profit motive in tobacco should be removed, branding should be abolished, and tobacco should be sold as, David Kessler says, in plain brown wrappers adorned only by warning labels. Tobacco taxes should include a 1 cent per pack provision to fund enforcement of mandatory sales to minors and environmental tobacco smoke laws. Tobacco farmers should be compensated for forgoing the growing of tobacco. Please think big, as big as the world, and be bold in strengthening the FCTC. You literally hold the lives of millions in your hands. Thank you.

Dr. Thomas Novotny

Thank you very much. Speaker number 9, please.

Victoria Colgan, Volunteer, American Lung Association and the Alliance for Lung Cancer

Good morning, distinguished panel members. Can you hear me? My name is Victoria Colgan, and I'm a volunteer working with the American Lung Association and the Alliance for Lung Cancer. I want to personally thank you for your work that you're doing to develop the FCTC, as it addresses a worldwide problem that has affected me very personally. I am an ex-smoker who was diagnosed with lung cancer in 1997. Like about half of those newly diagnosed lung cancer patients, I had quit smoking years before the diagnosis, after many, many unsuccessful attempts. I smoked for about 33 years, having started at the vulnerable age of 13. All three of the adults in my household smoked, my parents and an uncle who lived with us, and it's not surprising that given the example that was set for us, all five of us children learned to smoke at an early age. The example of the adults at home was constantly reinforced by images in advertisements that were ubiquitous. The ads all conveyed very strongly that this was a glamorous adult activity that enhanced a person's image.

It is with this in mind that I urge you to avoid using language in the Convention that limits advertising prohibitions to advertising targeted at children. Children thumb through

their parents' magazines and newspapers. I certainly did. Children ride with their parents in cars and see billboards in all parts of town. Children attend sporting events and watch them on TV. It isn't enough to restrict advertising in children's magazines and near children's schools. All tobacco advertising should be banned, everywhere, and forever.

I can't think of another legal product that, when used as directed, kills its user. How can we condone advertising such a product, even to adults?

In the last few years, the preciousness of life has become crystal clear to me. I think of the young children all over the world who deserve a long, full life, and I know that the Convention will save many more lives if it prohibits all advertising and promotion of tobacco products. Thank you for considering this.

Dr. Thomas Novotny

Thank you very much.

Victoria Colgan

And, I have some ideas on the legal thing, too.

Dr. Thomas Novotny

Would anyone like to ask questions of the three speakers?

Male Voice

(Inaudible)

Victoria Colgon

Well, I think, as I said, it's the only legal product that, when used as directed, kills. And I think that that's tantamount to screaming fire in an auditorium when it comes to free speech. We all know that it really shouldn't be legal but through a number of circumstances, it has been legal, but we wouldn't allow advertising of an illegal product. So, you know, it's really right there on the borderline, and I think that, given the known health risks that it poses, I don't see a reason why a good lawyer couldn't make the case that it's equivalent to shouting fire in a theater.

Dr. Thomas Novotny

Thank you. Questions? Thank you very much. Okay, you folks will kindly scoot out, and we'll start with speaker number 10 at this table.

Wayne Baker, President of the California Association of Laryngectomies

I'm Wayne Baker, President of the California Association of Laryngectomies and a proud member of INFACT. INFACT is a U.S.-based grassroots organization whose purpose is to stop life-threatening abuses by transnational corporations and increase their accountability to people around the world. My voice is brought to you by the tobacco industry, and it's dedicated to the millions who have given their lives and their money to tobacco's bloody bottom line. We, in CAL, are vitally concerned that the Framework Convention does not eliminate exposure of young people to all promotion activities, including all aspects of advertising, brand stretching, sampling, their presence in sports and entertainment, films and television.

The California Association of Laryngectomies and INFACT and our 40,000 members and supporters strongly support a boycott against (inaudible) and a Framework Convention that keeps the

tobacco transnationals out of public health policy and that includes strict timelines for compliance by the tobacco corporations with independent enforcement. We are concerned that the current treaty draft will not prevent the further spread of tobacco addiction with its devastating health, social, and economic consequences.

On Memorial Day, 1991, I sang at Carnegie Hall. Six months later, my voice box was removed. At age 16, the tobacco industry hooked me to a product that took my ability to sing and my ability to laugh. Now, while they search for new customers in every part of the world, they say that they've turned over a new leaf. They've got a youth anti-smoking program, and that's a lot like putting the hyena in the chicken coop. They also say that they now support FDA restrictions, after spending years of successfully fighting them. They seek our money. We hear what they say, but we see what they have done and what they continue to do.

The public knows what the industry is doing, and public opinion has turned against them in recent times. In a recent Harris interactive poll, 16 percent of respondents familiar with the company were boycotting Philip Morris products. Through the California Association of Laryngectomies and INFACT's

(inaudible) boycott, I have reached tens of thousands of young people to let them know that they can hold the industry accountable.

Today, on behalf of INFACT, I will be submitting messages from 500 people to force Philip Morris to give up the Marlboro Man and to demand that the treaty eliminate these addicting images around the world. The U.S., as home to the world's largest and most profitable tobacco corporation, has a particular obligation to ensure that the tobacco industry is not allowed to subvert the FCTC. For too long, Philip Morris and BAT, etc. have strong-armed governments to derail policies that would contain this preventable epidemic. Sound public policy is policy that is developed without undue influence and interference from those being regulated. The people of the world have the right to be protected against intolerable threats to their health.

Dr. Thomas Novotny

I'm sorry, sir, I will have to cut you off now. It is at 5 minutes. We do appreciate your written comments. Thank you. Speaker number 11, please.

Thierry Couderc, Community Relations Coordinator, Bay Area
Community Resources Transnational Tobacco Program

My name is Thierry Couderc. I work for Bay Area Community Resources, which is a non-profit organization in the Bay area for tobacco control. My request is to add a provision for a special fund. Bay Area Community Resources Transnational Tobacco Program recommends that financial resources be provided for translation of scientific studies, health education and media materials to assist other countries in accomplishing difficult work such as clean indoor air and smoke-free legislation.

It is vital that a fund be established to strengthen tobacco education programs. The industries or the countries benefiting from the export or import of tobacco products should be forced to contribute a percentage of their profits for awareness programs. All the scientific reports and public education materials that already exist in the U.S. and developed nations should be translated and adapted for different countries. This is costly but extremely important in terms of avoiding even costlier duplication of efforts in other nations.

In summary, funds should be established to create a clearinghouse of updated scientific reports, public information

campaigns, including media materials, in the 12 major languages that are spoken by most of the world population. Thank you.

Dr. Thomas Novotny

Thank you, sir. Next speaker, number 12.

Laurie J. Comstock

Hi. I'm Laurie Comstock, and I'm an individual, and I'm also a member of the Contra Costa Tobacco Prevention Coalition. I'm here today on my own behalf. I want to tell you about how the tobacco industry has totally devastated my family. My father died on November 6, 1963 of pancreatic cancer at the age of 39. He was a smoker. I was 13, my brothers were 9 and 11, and my sister was 8. Even though in 1963 pancreatic cancer was not linked to tobacco, it is now.

He was not at my high school graduation or that of my brothers or sister. He was not at any of our weddings, and he never knew any of his grandchildren and did not get the chance to grow old with our mother who also, I believe, has a tobacco-related disease.

When my sister was 13, she started smoking, thanks to the peer pressure and tobacco industry's targeting of kids. She was diagnosed at age 41 with lung cancer. She died 3 years later. She leaves her husband and two boys, who were then 14 and 16. My entire family is devastated, and I lost my best friend. I was with my sister for the last couple of weeks of her life. The pain and suffering of her last 3 days was unbearable for her, as well as our entire family to watch. Her lung cancer spread to her stomach, liver and her rectum and throughout her body. She was in agonizing pain from the tumors, especially the ones in her rectum. We kept her very well sedated. The last 17 hours of her life, she basically suffocated, even though she was on oxygen. She was having a hard time breathing, and the rattle of her lungs could be heard all through the house. She died on Saturday, October 16, 1999, at 1:15 p.m. at the age of 44.

Shortly after my sister's diagnosis, I was coming home from work, and I passed one of the busiest intersections in Concord. The time was approximately 3:15. School had just finished for the day. On the corner, right across from the parking lot of a 7-11 store, and just down the street from an elementary school and a park was a Marlboro van and stand. The sign on the stand said, "Free offers," and there were four or five 8-10-year-olds

hanging around this stand. I was livid. I went home and grabbed my camera and went back to that store and took pictures of the van and stand. By this time, the younger kids had left, and two teenage boys had obviously just bought cigarettes and were looking at the gear. Ever since that day, I have been involved with Contra Costa Tobacco Prevention Coalition.

Thanks to the tobacco industry's fundraising tactics and paying of our elected officials, or many of them, to look the other way or vote against anti-tobacco bills, I believe we have to put our foot down and speak up on our own, or the tobacco industry will continue on as usual. I have formed a grassroots group of people called Families and Friends Against the Tobacco Industry. We are having our first meeting on Saturday, March 10, 2001 at my house. If you'd like to know more about it, you can give me a call or talk to me later. Most of our members have lost loved ones to tobacco-related disease, although that is not a requirement to join us. We will not be bought out or stopped by the tobacco industry. I ask you to please set the strongest and strictest tobacco policies possible. We are not talking about macaroni and cheese or candy. We are talking about products that kill people and an industry that is more concerned about their profits than our

losses. They don't care about people, only their right to advertise and sell their deadly products.

I ask you to place a total ban on all advertising regardless of age. The tobacco industry lies and says they are not targeting youth, but I think the picture of the Marlboro van and stand near an elementary school and park says it all. Thank you for your time.

Dr. Thomas Novotny

Thank you very much. Do you have any questions from the panel here? Then, I thank all three speakers and ask that the next group then bring themselves to the table, and we'll move over to speaker number 13.

Serena Chen, Director of Tobacco Control Products, American Lung Association of the East Bay

Good morning. My name is Serena Chen, and I'm here representing the American Lung Association of the East Bay, which represents the three East Bay counties of Alameda, Contra Costa, and Solano. I'm the director of Tobacco Control Projects for the Association, and I'm here to urge you to consider banning all tobacco industry advertising, promotion, and

sponsorship - period. And, what I've brought today is a case study as to why we believe that just saying ban it if you're targeting people under 18, simply doesn't work.

The example is, in 1997, a coalition of Bay Area Asian Americans started a campaign to expose the tobacco industry's use of American role models in foreign countries to market tobacco. We had heard that American tennis player Michael Chang had been playing in tournaments sponsored by Marlboro and Salem cigarettes in Hong Kong and China since 1988. In fact, Judith Mackay of the Asian Consultancy on Tobacco in Hong Kong had written a letter to the editor in the local Hong Kong newspaper, kind of showing the contradiction between Michael Chang sponsoring a campaign against suicide and, at the same time, appearing in billboards all over Hong Kong under the Salem cigarette banner. In Hong Kong, when they hold the Salem Open, all the advertising is humongous. They're on buildings. They're on billboards. And, what you see here is a giant cigarette pack with Michael Chang on it. And here in the United States, some of us said "Michael Chang, who?" But in Asia, he has rock star cult status. Girls would be chanting outside of his hotel room, chanting, "Michael, Michael, Michael." And, it was Michael Chang, not Jordan.

So, in Hong Kong, Michael Chang had an incredible cachet. And every year, he was playing in this thing called the Salem Open. And it was rumored in the media that he was being paid more to just appear in the Salem Open than the actual purse was in the game.

When we mounted our campaign, we asked other people, his fans all over the world, to write a letter to Michael and ask him to stop marketing tobacco to Asians. He's always insisted that he is not marketing tobacco to minors but that he is grateful that Philip Morris and R.J. Reynolds have brought tennis to Asia. But we knew in our hearts this could not be true and, recently, in the release of tobacco industry documents, we have memos that show the Philip Morris people ecstatic that they had gotten Michael Chang to play in the Marlboro Open in China. And, in fact, they had written him two checks for \$40,000 each and made sure that he was not taxed on it by saying it was a contribution to his charity for him to play in the Salem Open.

And ironically, in 1990, when Australian Pat Cash won the Salem Open, he actually said, "Thank you for putting on this tournament, but I really do not like smoking and people should not smoke." Guess what? Pat Cash was never invited back to the

Salem Open. And, in fact, by 1992, there is a clause with the organizers of the Salem Open that they could not say bad things about the tobacco industry.

So, since Michael Chang's incursion into Hong Kong, in Asia, playing tennis under the banner of giant cigarette packs, Asian children, especially Hong Kong children, have been especially vulnerable. And studies have shown that most children in Hong Kong, when interviewed on the street in just 1998, they said, "What cigarette does Michael Chang smoke?" They all shouted "Salem," without hesitation, even though all the adults know that Michael Chang and other tennis players do not smoke.

Also, they have studies in Hong Kong that show that the - and I'm going off-script here - that, basically, the 12- to 14-year-olds who watched and attended tennis tournaments were more likely to smoke than the children of the same age who did not attend and watch tennis tournaments in Hong Kong. And, those children were 40 to 80 percent more likely to suffer throat problems, coughs, and phlegm.

So, we have the smoking gun. We have the documents that the industry congratulating themselves for securing Michael

Chang to market their products. This is not an attack on Michael Chang, but this is just to show how the tobacco industry uses sports sponsorships to attract not more adult smokers but to attract teenage and children and youth smokers in Asian countries. And, most recently, Hong Kong had passed a law banning tobacco industry sports sponsorships so, last year, last fall, the tobacco industry created a dummy company called Salem Open, which they claim has nothing to do with tobacco, and they put on the Salem Open, but they say it has nothing to do with cigarettes.

Dr. Thomas Novotny

I will ask you now to conclude your talk. Thank you very much. Next speaker, number 14.

Stella Aguinaga Bialous, RN, MScN, DrPH, Public Health Consultant

Good morning. Thank you to the delegation for the opportunity to speak. I'm Stella Aguinaga Bialous. I'm a public health consultant currently working part-time at the University of California, San Francisco. I have been involved in tobacco control for over 10 years, first in Brazil, my country of birth, and then in the United States as well at the

World Health Organization. In the course of my career, I have had the opportunity to study the worldwide tactics of the tobacco industry to boycott the tobacco control agenda.

I fully support the concept of the Framework Convention for Tobacco Control, and I am here to urge the United States, my country of residence, to take a strong leadership position in negotiating a strong Convention that will leave no loopholes for the tobacco industry to take advantage of.

The Chairman's Text addresses many issues, several of which have been applauded and/or criticized. There is one particular area that has not been given as much public attention, the protection of non-smokers against exposure to secondhand smoke, which is the focus of this testimony. The Chairman's Text states in item D, Guiding Principles, paragraph 2, that non-smokers should be adequately protected from exposure to tobacco smoke, and "adequately" is the key word here. What is the adequate protection of the non-smoker against secondhand smoke?

On item E, General Obligations, paragraph 2, it states that, as part of a comprehensive tobacco control strategy, each party shall to the extent possible, within the means at its disposal and its capabilities, reduce tobacco consumption and

exposure to tobacco smoke. Again, the key words here are "to the extent possible," and we need to be aware that there is possible to protect non-smokers against exposure to secondhand smoke.

And, lastly and most important, item G, Non-Price Measures to Reduce the Demand for Tobacco, under passive smoking, it says that implementation of legislation and other effective measures at the appropriate governmental level that provides for systematic protection from exposure to tobacco smoke in indoor workplaces, enclosed public spaces, and public transport, with particular attention to special groups such as children and pregnant women. I can only expect that a more detailed language will be developed to address the issue of exposure to secondhand smoke. And, as much as protecting children and pregnant women is a laudable goal, every individual needs protection. And it would be a mistake to narrow the focus of the language in the Convention and any related protocol, a mistake that I am confident the people sitting at the negotiating meetings will not incur.

It is important to note that, while some developed countries have been making progress in protecting the population from passive smoking, the tobacco industry has been preparing

for the possibility that the clean air movement is spread to markets where the industries have, so far, operated with minimal restrictions. And, worldwide, the tobacco industry continues to push for the accommodation and ventilation solutions, both of which are unjustifiable and unacceptable from a health standpoint. Thousands of tobacco industry documents confirm the tobacco industry's efforts and strategies to block smoking restrictions worldwide. And the industry has been preparing for a worldwide change in the social acceptability of smoking before the issue is even in the health policy agenda of most countries. For example, a 1988 - and I'll be brief with examples - document on the Philip Morris website, addressing industry concerns over increased public awareness about secondhand smoke in Europe states, and I quote, "Priorities are also appropriate with respect to the various kinds of ETS issues." ETS stands for Environmental Tobacco Smoke, which is the tobacco industry's preferred term. And, I quote again, "At least for the foreseeable future, the key area of dispute will be restrictions upon smoking in the workplace. Many people spend most of their smoking hours in a workplace environment, and widespread workplace restrictions would severely affect the industry." This was written in 1988.

I would like to also say that the same document goes on and on about the strategies the industry would use to block the widespread workplace restrictions, as well as other indoor smoking restrictions. And in places like in Latin America, the tobacco industry created programs, and I quote, "Unlike many other regional ETS consultant programs sponsored by the industry, the Latin project is initiated in anticipation of, rather in reaction to, the full-force arrival of ETS issues in Central and South America."

I would like to urge the United States have the opportunity to take the leadership in the promotion of clean indoor air for all individuals, without having to worry about legal issues related to Constitutional amendment rights. The examples from the United States show that to provide clean indoor air for all is an achievable goal and does not cause economic disaster, social chaos, or any other such empty unproven tobacco industry argument.

Dr. Thomas Novotny

Thank you very much. Our next speaker, number 15.

Lindile Ndlebe, San Diego Tobacco Control Coalition; Tobacco Control Commission for Africa

Thank you, sir. I want to start by thanking you for coming out here and hearing what we have to say. I believe it's a very important step of the total -

Dr. Thomas Novotny

Please identify yourself.

Lindile Ndlebe

My name is Lindile Ndlebe. I'm here representing the San Diego Tobacco Control Coalition and, also, I'm here representing the Tobacco Control Commission for Africa. I am their representative here in California. Having said that, I want to continue thanking you, because I want you to understand that this process has a direct bearing on the outcome of the FCTC. And, therefore, I want to be on record as thanking you sincerely for coming out here and want to encourage you to do this more.

I want to speak from a perspective of not only because I am here in California, which is in the forefront of tobacco control in the world, but also because I am from Africa. And I know

directly what happens with what we do here in tobacco control, its direct effect in developing countries. As we speak today, Africa has a huge burden on its shoulders. As Africa carries this burden, striving for political stability, economic development, and freedom from disease, the most important of all those is what we hear about all the time in the news, which is the AIDS/HIV scare. I want to tell you that, although that is something that's very important and urgent, according to the World Health Organization, over 10 million people will die in the next 10 years if tobacco control is not in the forefront of our agendas. These deaths, most of them, about 70 percent of them, will take place in developing countries, and I will bet you Africa will have a huge chunk of that burden of death.

These dire statistics are potentially more devastating than all the talk we hear about AIDS today. If it continues unabated, they have implications that are far reaching than what we hear about every day in the news.

I want to just touch on a few things. I know that the time is limited here. I want to start by saying that for California, for instance, we have in San Diego alone over 60,000 Africans coming to San Diego in the last 2 years. The state of California has to deal with how to address tobacco control

issues with regards to that population, and that is different from how you do it generally. And, therefore, it becomes very, very important that we know what goes on in those countries where these people come from, so that we'll be better able to serve them when they get here in California. And the negotiations for the FCTC and shows that not only will they be saved, their lives be saved from tobacco here in the United States, but their families were left back home will benefit from the provisions and the protocols of the FCTC.

I want to touch on a couple of things. One will be agriculture, growers. The adverse effects, how the effects of tobacco go beyond the smoker but to those who are non-smokers but are exposed to environmental tobacco smoke, to the farm workers, many of whom are women and children, who are exposed to large amounts of pesticides in tobacco farming. This requires the FCTC to look into including very strict and strong pesticide regulations for tobacco farms and productions that are enforced universally. And the FCTC needs to set a minimum standard based on health research as recommended by the World Health Organization on the issue of agriculture.

Dr. Thomas Novotny

I am going to ask that you now terminate your verbal comments, but please provide the written comments to us.

Lindile Ndlebe

Thank you so much. I appreciate the opportunity.

Dr. Thomas Novotny

Thank you very much. Number 16, please. Excuse me, just one moment. Any questions from our panel for the (inaudible). John Sandage?

John Sandage

I have a question for Serena Chen, and it's going to be essentially the same question I asked earlier. Let us stipulate for the purposes of today that the empirical evidence that you have brought to us and others have brought to us, that an advertising ban would be an effective public health initiative, we are nonetheless a government of laws and not of well-intentioned men and women. And for us to advocate or to sign a

treaty that banned tobacco advertising, we would need some legal Constitutional basis under our own laws for doing so. And it would be very helpful to this group, to the members of the delegation, if you have any such suggestions or arguments, to give them to us because, without that, I don't personally see how we can go where you would like us to go.

Serena Chen

Well, first of all, if I knew enough Constitutional law to help you, I'd be a lot richer, but I'm here because of what I believe in and because I see what happens. I also didn't mention that a lot of times we get phone calls from the English As Second Language classes and with people coming over from other countries and basically thinking that in America all Americans smoke. And at the Lung Association and I'm sure the Cancer Society and the Heart Association, we go and we have to speak to all these new immigrants who have been sold a bill of goods by U.S. advertising overseas, to the extent that when they realize they're coming to American, they want to become more American. And they smoke to get ready to come to America, and then they come here, and they run right up against the wonderful secondhand smoke prohibitions that we have here.

But, I don't have an answer for that. The situation is that I compare tobacco advertising to the rats during the plague, where the rats carried the vector. And, unless you get rid of the rats, you will not get rid of the plague.

Dr. Thomas Novotny

Thank you. Any other questions? Now to speaker number 16.

Catherine Dodd, District Director for Congresswoman Nancy Pelosi

Good morning, Dr. Novotny, members. My name is Catherine Dodd. I'm the District Director for Congresswoman Nancy Pelosi, who worked with Representative Doggett to support the creation of the FCTC, and I have her remarks with me today.

Welcome to the 8th Congressional District, and thank you for holding this important hearing in San Francisco, which is an international city. It's appropriate that this initial hearing, and I hope it's only the initial, that you have others around the country, to gather feedback on Chairman Amorim's first draft of the Text, be held here in San Francisco, one of the first locations in the country to ban smoking indoors, to limit the location of advertising of tobacco products, and to launch anti-

smoking campaigns in schools. I commend the NGOs here today and around the world for their advocacy for effective global tobacco control.

Since the World Health Organization Assembly first proposed the FCTC in 1996, much work has been done. I commend the choice of Ambassador Amorim as the chair of the International Negotiating Body, because he brings years of diplomatic experience to this complex assignment.

The Text itself has improved with each publication. It is absolutely essential that the United States advocate for strong and binding language in the FCTC. The language used throughout the FCTC must contain concrete provisions and require parties to set goals and timelines if the treaty is to achieve its stated goals. It's also imperative that the language throughout the document consistently reflect the addictive and lethal nature of tobacco use and not be diminished anywhere to just being called "dependence on tobacco."

The international health costs of tobacco promotion are staggering. Of all the people alive today, tobacco is expected to kill 500 million, including more than 200 million of today's children and teenagers. In the United States, where less than

five percent of the world's smokers live, tobacco companies spend over \$5.6 billion on advertising and promotion each year. Eighty-six percent of teenagers who smoke use the three most heavily advertised brands. The tobacco industry's well-crafted advertising and marketing campaigns lure women and girls into picking up this deadly habit. Madonna amidst a pack of cigarettes and Yves St. Laurent gift packs are symbols associated with hip American affluence, exported to women and girls around the world.

You will hear from experts today that bans on tobacco advertising and event sponsorship, along with other promotional activities, have proven to be effective in decreasing tobacco usage. These experts believe that the standard for the ban on advertising must go beyond just ads targeted at youth less than 18 years of age. Countries with Constitutional constraints on banning advertising should be permitted to enact the strictest restrictions that fall short of a ban on all direct and indirect advertising sponsorship and promotional activities consistent with their Constitutional requirements.

Tobacco smuggling undermines tobacco tax and price policies enacted to deter the use of tobacco, which have proven to be especially effective with young people. Smuggling is a

strategic global problem, and the FCTC must consider measures designed to reduce the illegal trade of pharmaceuticals, alcohol, and firearms as blueprints for this international agreement.

I encourage the United States representatives to the International Negotiating Body to listen to the concerns and wisdom of the NGOs gathered here today. They have provided and continue to provide invaluable guidance to U.S. policy makers in the fight against preventable death and morbidity caused by tobacco.

Thank you for coming to San Francisco and your interest in the concerns of our community.

Dr. Thomas Novotny

Thank you very much.

(End of Tape 2)

Professor Stanton Glantz, Professor of Medicine, University of California, San Francisco

I am Stanton Glantz. I'm a professor of medicine at the University of California, San Francisco. I'm here to generally support the Framework Convention, but there are several, I think, serious problems with the draft text.

First of all, I'd like to second the point that Dr. Bialous made, that the language on secondhand smoke and clean indoor air is wholly inadequate. There is absolutely no reason to not simply require completely smoke-free environments. The tobacco industry's claims of economic chaos have been discredited over and over and over again. The tobacco industry's claims that ventilation is a solution have also been rejected by every scientific body which has looked at the question, that is, everybody that isn't infiltrated by the cigarette companies.

The language should simply say that everyone deserves a smoke-free environment. The WHO has already taken this position; the WHO European office recently published a report to that effect. Limiting the scope to pregnant women and children could be used by the industry as a way to fight more comprehensive policies around the world.

I agree with all the previous comments made on advertising. The advertising restrictions written into the Framework have a loophole you could drive a huge truck through and, I think, will have no practical effect whatsoever on tobacco marketing. Furthermore, I think it's a mistake to limit it to children. The tobacco industry kills adults, and people tend to forget that. And, in fact, if you can get someone to start smoking at 20 or 21 or 22 or 24, which is where the focus of energy here in the U.S. is right now and where the most rapid increases in smoking are, they die just as if they started at 12. They just die a little earlier.

In response to your question, Mr. Sandage, about how do you do this legally, I think you can simply write the Convention to say that you urge a ban on all tobacco advertising in countries that are capable of doing it. If there are problems in the U.S., that shouldn't be used to drag down the rest of the world. Furthermore, I'm concerned that if the Convention limits the scope of advertising restrictions, that could be used by the tobacco industry and other countries to roll back advertising bans where they exist. You have to realize the tobacco industry is very smart, very rich, very aggressive, very unethical, and very highly motivated. And when you write this Convention, you have to think of how is the tobacco industry going to twist it

around and use it to promote their interests, when you put some well-meaning loophole in it.

Finally, I think you need to be very careful about allowing the tobacco industry into the process at all. We know from the millions of pages of industry documents that have been released, the industry lies, that the industry is deceptive, that the industry does not play straight and honest with the system. And I think until the tobacco industry demonstrates that it is acting in good faith by voluntarily ending all advertising or voluntarily ending all opposition to clean indoor air, to show that they indeed have changed, as opposed to have pretended to change, that you should really keep them at arm's length in this process. The analogy with rats was made earlier. I would amend it a bit. The rats are not the ads. The rats are the cigarette companies, their executives, their lawyers, their publicists, and the politicians that they pay off. Unlike AIDS or tuberculosis or malaria, cancer and heart disease are spread by people with intelligence. And they are called tobacco industry agents.

Finally, I'm very concerned about the situation here in the United States with the recent election. While I realize you're here as diplomats rather than politicians, I can't help but note

that George Bush was heavily supported by the tobacco industry and that the Bush administration is just sopping with tobacco industry connections. Karl Rowe, Counselor to the President, came from Philip Morris. Tommy Thompson, the Secretary of Health and Human Services, has very close ties to Philip Morris and took about \$70,000 in campaign contributions. High-level Justice Department officials came from law firms that, among other things, sued the University of California, my employer, to keep us from releasing secret industry documents. And I am very concerned that this Convention not be turned into a pro-tobacco action by the United States. And if the United States cannot support a strong treaty and a good treaty, I would frankly rather see it withdraw rather than drag the process down, and I'm very concerned about that. On the other hand, if the United States rises to the occasion, you can play a very important and positive role in the process.

Dr. Thomas Novotny

And, I will ask now that you conclude your testimony.
Thank you very much. Speaker number 18.

Ernestine Daniel, Polaris Research and Development, the San Francisco African-American Tobacco-Free Project

Thank you. Good morning, U.S. delegates. My name is Ernestine Daniel, and I'm with the Polaris Research and Development, the San Francisco African-American Tobacco-Free Project.

I would like to just focus on the responsibility of the United States. The United States is the home to Philip Morris, the largest tobacco company in the world. It has an obligation to negotiate the Framework Convention on Tobacco Control from a global perspective, rather than a domestic one. Globally, there are 3 million people dying per year from tobacco-related diseases. By the year 2030, worldwide mortality will rise to about 10 million per year, over 70 percent of those deaths occurring in developing countries such as Thailand, India, China, Africa, etc. Therefore, the global epidemic needs a global mediator, which is the Framework Convention on Tobacco Control.

I am speaking on behalf of the San Francisco African-American Tobacco-Free Project and equally on behalf of the people of African descent everywhere. Our sister organization movement against tobacco in Senegal, West Africa does not have

sufficient resources or funding to support tobacco control. An example of this is that many faces of tobacco control legislation introduced in 1985 have subsequently been modified or cancelled. This includes a ban on television advertising of tobacco products and bans on smoking in selected public places. A representative of our buddy country was here during the week of January 6 through January 12, 2001. This allowed us to get acquainted with one another and to share our ideas and experiences on tobacco control and the deadly marketing of tobacco in our respective communities. It has been reported to us that in West Africa, it is common for young schoolgirls to be given cigarettes to sell in their countries for money, wages. He also stated that tobacco growing depletes nutrition in the soil at a much faster rate than other crops, thus rapidly decreasing the life of the soil. This is a serious problem for the countries that do not grow enough food to feed themselves.

What the corporate executive is saying is we need more people to smoke cigarettes, pure and simple, a direct quote. Gentlemen, we are not in this business for our health. I hope that the U.S. delegates take a strong stance on these issues. This is a global problem that requires a strong international Framework. The key point would be the United States should not stand in the way of what we are trying to accomplish.

Dr. Thomas Novotny

Thank you very much. Are there any questions from the panel? Okay, thank you. The next group can come up here, and we'll begin with speaker number 19.

Amelia Fernandez Nienedorp, Polaris Research and Development

First, let me thank the U.S. delegation for taking the time to listen to the concerns that we, the people, have regarding the Framework Convention.

Dr. Thomas Novotny

Could you please identify yourself, and every other speaker should do the same right at the beginning.

Amelia Fernandez Nienedorp

Okay, sorry about that. My name is Amelia Fernandez Nienedorp. I work with Polaris Research and Development, a social science research firm here in San Francisco. Again, thank you for listening to our concerns about the Framework Convention.

Although there are many issues within the existing Framework Convention text that need to be modified, I'll only address one, the language concerning the advertising ban. And, I don't mean to beat a dead horse, because it seems like everyone is concerned with it. In a recent conference with international anti-tobacco advocates, I heard story after story about the advertising strategies used by the American tobacco companies abroad. One such story from Uganda, Africa told of a giant street fair and concert that was sponsored by the American tobacco company, Benson & Hedges. Sure, the tobacco company can claim that their advertising, which is visible everywhere, targets adults, but children and youth under 18 years of age also participated in the event. And we can't in all honesty deny the power of advertising on adults, let alone youth.

It would be morally irresponsible for the Framework Convention to contain language that allows the tobacco companies to continue their deceptive advertising practices abroad. As has been said before, it's likely that by 2030, worldwide mortality from tobacco will increase to 10 million deaths a year, with over 70 percent of those deaths in the developing world. We have a responsibility to stop that.

With this in mind, I respectfully request that the Framework Convention language regarding advertising ban be changed to include all direct and indirect advertising, and that the under 18 loophole be removed entirely. Thank you very much.

Dr. Novotny

Thank you. Speaker number 20.

Melinda Moore

Good morning. My name is Melinda Moore. Again, I feel sorry that I'm just kind of reiterating what other people have said, but the tobacco industry makes billions of dollars a year selling and marketing a lethal product. They continue to sell their product, even though they know nicotine is addicting and causes lung cancer and other serious health problems. Now, as a result of a lot of hard work and diligence by people in this country, the industry has begun to be held accountable for their actions here. They've been made to stop directly marketing to youth. They've had to put warning labels on cigarettes. They've had to stop using pesticides proven to hurt U.S. workers picking the tobacco - all actions fought by the U.S. tobacco industry, I might add.

However, as consumers in the United States become more aware of tobacco industry practices and continue to win in court against the industry, tobacco companies face a serious and growing threat to their continued long-term profits. In order to respond to the threat to their bottom line, companies like Philip Morris determined that they needed to expand their marketing efforts abroad, targeting developing countries in Asia and Africa, where there is currently less government regulation and fewer resources to fight the tobacco industry. The Framework Convention on Tobacco Control document must afford the same protection to citizens in other countries as those enjoyed by U.S. citizens. It is our only chance to mitigate the growing damage being done by the tobacco industry around the world, particularly in developing countries.

Emerging nations cannot afford the long-term health consequences that are the inevitable result of increased marketing efforts by the tobacco industry. The World Health Organization estimates that by the year 2030, more people in Africa will die from smoking-related illnesses than from AIDS, malaria, and malnutrition combined. A strong Framework Convention is the only way the United States can live up to its responsibility to ensure that people in the developing world share the same protection from the tobacco industry in general,

and Philip Morris in particular, as do we. Please negotiate a global treaty with human rights and public health at its core, rather than concerns over trade issues and the profits of tobacco companies and their shareholders. Thank you very much.

Dr. Thomas Novotny

Thank you. Speaker number 21 please.

Wendell Chin, Director, Chinese Progressive Association

Hi. I'm Wendell Chin with the Chinese Progressive Association here in San Francisco. I'm the director and, actually, I know this is a public hearing, so we actually have some of our youth who are going to be using up the total 5 minutes to present before you on our testimonial. So, thanks for allowing this.

Dr. Thomas Novotny

When you're ready to begin, let me know, and I'll push the button.

Jonathan Yan, Chinese Progressive Association

Okay, I apologize for the inconvenience, and good morning and thank you for coming out today. I'm Jonathan Yan, and we are with the Chinese Progressive Association, one of the many different local organizations fighting against tobacco globalization. As you all may know, many well-developed countries have already established efficient tobacco control laws limiting tobacco corporations within their borders. And because of this fact, many transnational tobacco corporations are moving overseas towards developing countries for large markets, which will promise more profits. For the past decade, the smoking rates in developed countries such as the U.S.A. have dropped due to the success of anti-tobacco campaigns, but at the same time, the smoking rates in developing countries such as China have been increasing at an alarming rate.

For many years, transnational tobacco corporations have tried to enter China's presently closed markets. Here, the Great Wall built to keep out foreign invaders have done a great job in defending China from many different TNTs but, in the past, TNTs such as Philip Morris have met some important and influential friends. They are former President Clinton and Vice President Gore. With their help, agreements such as the China

Trade Bill and the U.S.-China Trade Agreement has broken down the Great Wall, allowing Philip Morris and his accomplices to now enter the Chinese market without any barriers, making China the new Marlboro country. Once they enter China and other developing countries, they will begin a series of advertisements targeting women, children, luring them to consume their deadly product. Cigarette consumption in China since the 1970s has rose a shocking 260 percent and is now continuing to climb. Presently, about 750,000 smokers die from lung cancer and other tobacco-related diseases. If we do not advocate a strong FCTC, cigarette consumption in China is expected to reach an unimaginable 2 million deaths by the year 2020. Most tobacco corporations can care less as they sweep in enormous profits from these dying smokers, one-third of which are women and children. Under President Bush's new administration, it is very possible that more bills will be passed in assistance of TNTs, giving them even more freedom to invade on developing countries throughout the world.

China is only one of the many examples of developing countries under the relentless attacks of TNTs. For almost 30 years, transnational tobacco corporations have been able to go around different laws, and many governments that have tried to stop and Al Gore against tobacco globalization, but none have

effectively worked, at least not until now. With the FCTC, we can effectively regulate or even stop the trade of tobacco and its related products. Also, since the U.S. is the biggest tobacco export country, the U.S. government definitely has the responsibility to take a strong stand in the Framework Convention on Tobacco Control. The issue of public health must oversee profits, no matter what the circumstances are.

For the FCTC, the people have our community have come up with the following demands: To remove or exclude tobacco as a trade item in bilateral or multilateral agreements. Complete ban on all forms of tobacco advertising - this should be part of a convention, not negotiated as a protocol. Setting up an international funding mechanism to support international tobacco control facts.

Next, we'll have Jessie Yu on behalf of the Hong Kong Council on Smoking and Health.

Jessie Yu, Chinese Progressive Association; Hong Kong Council on Smoking and Health

Hi, my name is Jessie, and I'm with the Chinese Progressive Association. In the past, we at the CPA have been working together with the Hong Kong Council on Smoking and Health. On

behalf of them, I'd like to give their comments on the Chairman's Text.

The first comment, packaging and labeling, we should ask for a clear minimum limit of space on the cigarette package be designated for have warning, tar and nicotine (inaudible), say at least half of the surface. The previous statement that simply requires each unit package of tobacco product carries a general health warning, including a picture, can easily be circumvented by the tobacco industry. We have seen many examples in Hong Kong.

Second, education, training and public awareness: Our proposals are well-intended but the results for carrying this out should be guaranteed. If all possible, parties should consider apportioning a fixed percentage from their annual tobacco levy for the purpose.

And third, advertising, promotion and sponsorship: We should advocate for total ban on tobacco advertising. The Chairman's Text, saying that imposing straight restrictions on all forms of direct and indirect tobacco advertising promotion is not forceful enough. There is no yardstick for a straight

restriction and hence for this provision, may easily be ignored.
Thank you.

Dr. Thomas Novotny

Thank you. Speaker number 24.

Tim Moder

Hi, my name is Tim Moder. I'd like to welcome you to California and advise that you stay a month or so. Then, when you go back, you'll hate the tobacco industry a lot more than you do right now. I'd like to begin with a slight pause for the 30 to 40 people who are going to die around the world while I'm talking. There'll be thousands more who get sick while I'm talking.

One of the questions that came up earlier was about what the U.S. could do as far as presenting an idea. Could the U.S. really do it? And that had to do with advertising. It seemed to me it was only a few years ago that the FDA thought they had the authority to regulate the advertising, and we were all jumping up and down just dying to see all those signs go down. But, of course, the courts took that up. And it seemed to me

the Supreme Court came and said to Congress, well, we can't give it to them now, but you can give it to them. So, I don't see any problem with the U.S. going the ultimate and banning the advertising, if Congress can be convinced, but the idea is there. And I think it should be presented to the rest of the world.

One of the other problems with tobacco is everybody talks about the profits it makes and all the people who are dependent on the money. And I'll admit it is going to take a long time. But for every dollar of profit that they make, they probably cost society \$100 in physical health problems and mental problems and every other kind of problem. Society loses overall. It may take years for all those people who are smoking to recover to see the profits of cutting back on the tobacco industry's profits. The profits that society has in money and in health, it's going to take years. I think the whole project that's being set up, you should look at what the ultimate goal is. You're here now. We want to get to here. How do we get to here? Even California has still got a long way to go to get to what we consider to be the ultimate. We've got lots of work to do, and California is way ahead of the rest of the world. This is probably going to be a 20- or 30-year program that will be necessary to carry this out around the world.

I want to reiterate or ditto everything everybody else said here. I need 5 or 6 hours probably to repeat it all. I wanted to bring up one thing about public health for trade as an item that was on this paper I was given. Two hundred years ago, people's lives, their bodies, their souls were sold, and that was an industry that made money, and it was a trade thing between Africa and the U.S. and around the world. And it took 100 years to figure out that that was wrong. And, to me, it's self-obvious that what the tobacco industry is doing is the exact same thing, and it's obviously wrong. And, people are being enslaved by nicotine. I'm not saying that we're going to have a prohibition on tobacco, but we have to stop the \$10 billion a year that's being used to promote it to everyone. And no matter what you say about kids being advertised to, all the ads that are pointed at adults are absorbed by kids in the same way, especially now in the media on Hollywood, TV, and the movies. Kids see all of that, and it's all directed at them as well as adults. And I don't know what the percentage is of how many adults die compared to kids dying from that smoke, because the kids get older before they die anyway. The tobacco industry is willing to give them free cigarettes because once they're hooked they're going to make a lot of money off of them.

Thanks.

Dr. Thomas Novotny

Thank you very much. Do we have any questions from the panel? John Sandage.

John Sandage

Speaker, I'm sorry I don't remember all your names, but speaker number 19, speaker number 22, 23, and 24, you all asked us to support a worldwide ban on tobacco advertising. And your arguments, as I've said before, are that that's a good public health initiative and it makes sense from a policy perspective. It would be very helpful to us, as a delegation, if you have any ideas that you could offer to us how you think we can square your request with what every court that's considered the question understands the First Amendment to mean. So if you have any legal theories that would permit the U.S. to support a complete ban on tobacco advertising, we would be pleased to hear it.

Female Voice

The thing with the advertising and the law is it's killing people. It's murder. There are laws that say you can't kill

people. In that sense, it needs to be tied into that somehow. I don't have all the language now, but I'll be more than happy to go back and talk with the people that I work with and the people that I collaborate with in Africa and other countries to discuss that, because it is something you've brought up several times now. As far as the language, I couldn't tell you anything now, though.

John Sandage

What I'm asking for is your help. If you want us to go where you're asking us to go, you need to help us find a way to get there. And, we would be delighted to see whatever you can come up with.

Wendell Chin (?)

If I can just actually give you maybe a little bit more details, I know what you're saying is how can we do this. How can we move that? And, I would say, here in San Francisco, CPA with the help of other groups here actually got a ban on billboards and marketing of logos in the high schools, which a lot of the youth here were a part of that in the City and County of San Francisco. So maybe we could look at how that could help

you guys when you guys go to Geneva, but just to let you know it has happened here in San Francisco.

Male Voice

Are you trying to say that many courts have used the First Amendment, freedom of speech, in terms of the advertising? Are you trying to say that? Well, the thing is, I understand that the First Amendment, but advertising tobacco to children, to adults, to women or males, it's pretty much advertising death, because nicotine is proven to be addictive and has proven to cause lung cancer and many heart diseases. And to advertise death towards people, I don't think it should be brought under the First Amendment. It's an argument that should be noted when you guys are in Geneva or anything like that.

Dr. Thomas Novotny

I'm sorry. I think this gentleman wanted to respond too.

Tim Moder (?)

Yeah, again, I go back to the FDA. Clearly, Congress can give them the power to regulate it, and I don't really understand the question.

John Sandage

The question is, can you offer any argument why - I mean, the Courts have recognized that commercial speech is protected under the First Amendment.

Tim Moder (?)

Right. But if I just invented cigarettes and put them on the market yesterday, they would never be accepted in the first place. So, I don't see any question that cigarettes are a lot different than all other things that have a First Amendment right to advertise. And, Congress can give that regulatory power to the FDA if they want to.

Male Voice

As I understood the thesis of the colorful presentation that your group made, you're arguing that the tobacco industry has broken into the China market, and then you said, Jonathan, that one-third of the deaths will be women. Is it your contention, then, that the tobacco industry is particularly going after the female market in China?

Jonathan Yan

One reason that I said China was because, I was just saying as an example of many developing countries. I believe that tobacco corporations are targeting developing countries and, within those developing countries, they are targeting especially women and children, due to the fact that there's a smaller number of women and children smoking in this world today. And they're an open target for TNTs around the world. And, yes, I'm trying to say that they're targeted by tobacco corporations presently.

Male Voice

All right, now, less than one-third of the smokers in China are women, so on what basis are you projecting that one-third of the deaths will be women?

Jonathan Yan

Statistics that we have done throughout the past years show that by the year 2020, one-third of the deaths will be women and children. This is based on the rate that smokers of women and children are increasing at this time.

Male Voice

I have one additional question that I'd like to bring out. The demonstration that you provided here suggests that there are some very adverse potential effects of opening markets, to establishing free trade between China and the United States. I guess it's two questions, and any of you can answer. One, how could we possibly single out tobacco when we establish a free trade enterprise between countries on a bilateral level - or multilateral, for that matter? And secondly, you know, in terms of tobacco control activities, usually these have been shown to be most effective starting with the grassroots, whether it's the local level or even at the state level, in the case of California. In the case of China, has there been any indication, has there been any sort of suggestion, that that sort of grassroots activity has been provoked by the trade issue in particular?

So, the two questions are how can we single out things in terms of opening free trade? What's the legal and other basis for that? And, secondly, in the case of China, what did this do in terms of any sort of grassroots response?

Male Voice

Your second question, are you trying to say that how this trade initiate any grassroots (inaudible)?

Male Voice

Yeah, was there any response from China with respect to the opening of trade specific to the potential effects of the tobacco trade increase? Anything at all?

Wendell Chin (?)

I guess I'm not sure what the answer is to that. One is, we're not an organization of lawyers, as you could tell, but the other thing is that the laws are usually set up to protect what's in place. So, like the gentleman was saying over there, if you set up - if you tried to market tobacco now and create a whole, you know, smoking now, I mean, the people, it wouldn't

pass. So I think that's - and, then, the other thing is that we're not against trade, free trade, I'd say, but we are against selling cancer. So, that's how I think we look at it is the tobacco industry, we're not against other types of free trade but, you know, tobacco has obviously been proven to be deadly. So, there's a difference I think, you know, that's what I would put down.

Tim Moder (?)

Well, I know that there have been certain pesticides and things like that that have been banned in the U.S. And so, free trade then says we can sell it to Mexico or Honduras, and they'll put it on our food, which they then ship back to us, and we get the pesticide anyway. Does that make any sense? No. And tobacco kills lots of people. I don't know, you know, what all the trade stuff should be. I thought this was the World Health Organization looking at this, not a bunch of people worrying about trade, but about health. And how health is a lot more important than worrying about whether the tobacco industry makes any money or not. And as I said before, for every dollar of profit they make, they cost society thousands of dollars in health problems.

Dr. Thomas Novotny

One last comment, and then we best move on.

Male Voice

I was just given this. It says here that tobacco was taken out of the trade agreement in Vietnam, and I believe if it's done, if this tobacco trade have been taken out in anyplace in the world and has done here in Vietnam, I mean, I believe that it can be done in China. It could be done in eastern Europe. It could be done anywhere. I mean, selling cigarettes and tobacco is different from selling candy. One kills; one does not. If you're selling something that kills, I don't believe that it should be even mentioned as a free trade item.

Dr. Thomas Nototny

Okay, thank you very much. Any other questions from (inaudible)?

Male Voice

I'm just curious, Jessie, your advocacy for one-half of the space on the cigarette package being devoted to advertising. Is there some specific basis for that? That estimate of the space that should be devoted?

Jessie Yu

I'm sorry, it was just something that the Hong Kong Council on Smoking and Health kind of suggested. It wasn't really anything they wanted to do. It was just a suggestion.

Dr. Thomas Novotny

Thank you. I think we must move on. So, I will ask this group at least to shift. It sounds like (inaudible). Would speaker number 25.

David McGuire, Mission Agenda

Good morning to the U.S. delegation. I am David McGuire from Mission Agenda, a poor people's organization in San Francisco which works with SRO hotel residents and other exploited people, especially people of color, in San Francisco's

historic Mission District, the top tourist attraction in San Francisco, the world's most popular travel destination.

In a previous lifetime, I was an award winning and well paid copywriter with Young & Rubicam, the world's largest advertising agency. We sold whatever we were paid to sell, whether it caused cancer or not. In my case, I smoked Chesterfields while writing my successful ads, until one day I coughed up blood. Six years later, I managed to quit, after being told my condition might be terminal. This is the truth about tobacco and about tobacco advertising, and specifically, advertising under the cover of sports sponsorship, as we who did it well knew inside our guarded buildings.

Today, our brothers and sisters of color in the Mission pay hard-won dollars for cigarettes to which they have become, as I did, addicted through advertising. In Zimbabwe, our sister country, I advocate for the young soccer players who will soon become addicted for life to tobacco through advertising, which purports merely to sponsor their football. As an advertising professional, I carefully inform you this is a calculated, murderous and cynical lie for money.

We call on the U.S. delegation to eliminate the deal-breaking words "under 18" regarding sports sponsorship.

I call on all our moral and civilized advertising writers and art directors worldwide to post a layout on their door: "Please get someone else to do the tobacco ads." If we all stop doing it at one time, it would send a message, and they wouldn't get away with this terrible selling of death any more. Thank you.

Dr. Thomas Novotny

Thank you, sir. Speaker number 26.

Peter T. Muller, Tobacco Prevention Coalition of Contra Costa County

My name is Peter Muller. I'm with the Tobacco Prevention Coalition of Contra Costa County across the bay. One of the highest priorities to reduce or hopefully stop the alarming and dangerous increase of underage smoking must be to halt glorifying, glamorizing cigarettes, cigar smoking. By the way, cigar smoking is being encouraged more and more, as well as snuff and chewing tobacco. Philip Morris, R.J. Reynolds, etc. logos and mottoes should be banned from youth-oriented

merchandise, and stores should demand two types of proof-positive - I underscore proof-positive - photo IDs. Other deterrents: Discourage the full-page color - underline color - ads in throwaway-type periodicals in particular. These ads in these freebie-type magazines around the San Francisco area are called *The Guardian*, *SF Weekly*, and *Express*. The only ads that are color are cigarette ads. To some extent, alcohol or liquor, but cigarettes are the ones. They at least could accept or be encouraged to accept only black and white-type ads. These papers are also conveniently placed around schools. And ones that I've noticed on the other side of the Bay, and I haven't noticed them over here, but they're always next to intermediate schools.

Demand and enforce that Hollywood directors and studio management not show their stars smoking. I've noticed, and I think all of us have noticed, that there's more and more smoking of the stars, and that of course attracts the youth's attention. A recent survey taken by 100 teenagers recruited by the American Lung Association found that 77 percent of films contained tobacco use, and 82 percent of those using tobacco were the lead or supporting actors.

Another bullet I have, and I've kind of changed some of my prepared comments you have in front of me, as you notice. One of the third bullets is to stop tobacco firms from interviewing and giving samples to young people. That of course has been brought up several times before.

Another thing that is coming up quite predominantly, that I've noticed just in the last month or two, is out-of-state mailings to purchase cigarettes are increasing in these so-called shopper's supplements that are in Sunday newspapers. They now are offering, again, full-color and, of course, coupons for anybody, in quotes, "over 21" can order cigarettes in various quantities and even using their Visa card. This opens Pandora's Box immensely as far as increasing cigarette sales, also they are bypassing sales tax, too, in our state.

Also, at summer recreation centers, amusement parks, public pools, etc., the target group has been as young as age 14. Unfortunately today, one in five teenagers smoke, and the number using tobacco products, including marijuana, is growing. More than 80 percent of adult smokers report they have started habit during their teens. Every day, another 3,000 get hooked, a staggering fact. Models such as "Be smart, don't start"; if you

smoke, quit now; and if you don't smoke, don't start, sack the pack, and don't buy the lie." Thank you.

Dr. Thomas Novotny

Thank you, sir. Speaker number 27.

Danny Cheng, President, American Association of San Francisco and San Mateo Counties

Hi. Good morning. I'm Danny Cheng, President of the American Lung Association of San Francisco and San Mateo Counties. I appreciate the opportunity to voice the ALA of San Francisco and San Mateo's support for an effective and enforceable Framework Convention on Tobacco Control that holds the tobacco industry accountable. The World Health Organization has taken a powerful step forward by initiating the first treaty on tobacco control and is to be commended for this effort.

The WHO recognizes that we are on the verge of a global pandemic of tobacco disease and addiction. For example, a recent study of smoking in China, published in the *Journal of the American Medical Association*, that I would like to quote here, found that "if current smoking rates continue, by the year 2025, 2 million smoking-related deaths are predicted to occur in

China, at least 50 million Chinese smokers alive today are expected to die prematurely." The average Chinese smoker spends one-quarter of his or her income on cigarettes. So, in 24 years from now, 2 million smoking-related deaths are predicted in China. Two million is about one-third of the population of the Bay area, and 50 million people alive today, okay, will die prematurely, which is twice the population of California today.

Today, I will speak specifically to the advertising and promotion provisions. The Chairman's draft language "prohibits all forms of direct and indirect tobacco advertising, promotion, and sponsorship targeted at person under the age of 18." ALA strongly opposes the Chairman's draft language, because the "targeted" standard is so weak that you will be ineffective in stopping tobacco industry marketing to children. This definition provides a huge loophole for the tobacco industry to simply claim its marketing efforts are directed at adults and escape any meaningful restrictions.

Today is the 21st century. About 150 years ago, the American and our European allies used battleships to open the free trade to China, and later we call it the opium trade. Nowadays, we are smarter. We don't use battleships. We use Philip Morris marketing power to achieve the tobacco trade and,

instead of opium, we changed the name to tobacco. No matter what we call it, opium or tobacco, the final outcome is the same, which is slow and painful death for the users.

ALA believes that FCTC should include a ban on all forms of advertisement and promotion regulations. The tobacco transnationals, aware of the power of tobacco advertising and promotion, have been spending millions promoting their deadly products overseas. They have been aggressively targeting children in developing countries, all the while claiming they are advertising only to adults. Philip Morris alone spends \$813 million on overseas advertising. The result has been worldwide sales of cigarettes reaching \$296 billion in 1996. It's rising.

Big tobacco must be stopped from marketing its products to another generation of children. Studies have shown that a comprehensive ban on tobacco advertising and promotion can reduce tobacco consumption, while partial bans have little effect. In the age of the information superhighway, tobacco advertising and promotion does not stop at national boundaries. Only a worldwide ban on tobacco advertising can ensure that children are not barraged by tobacco images when they watch international sporting events, read international magazines, and

surf the Internet. Today's children hold the key to ending the scourge of tobacco, but big tobacco companies continue to seduce children through its slick advertising.

The American Lung Association, therefore, urges the United Stands up to big tobacco and support a ban on all advertising, marketing, promotion, and sponsorship of tobacco products.
Thank you, chairman.

Dr. Thomas Novotny

Thank you, sir.

(End of Tape 3)

John Sandage

- sound like a broken record and, maybe for future speakers who plan to suggest to us the need for a worldwide ban on tobacco advertising, you could plan on offering us, if you have them, any legal or Constitutional arguments that would support that position. And I would ask you, Mr. Cheng, can you offer us any guidance on that difficult question?

Danny Cheng

Yes, I've read a lot of comments and answers to this. I think in the United States we have the First Amendment to protect free speech, advertising in many languages, but I think the recent court cases show that advertising cannot go too far because, first of all, you cannot show sexual pictures to advertise products. And the same thing is, you cannot yell fire in a packed theater. The reason is this way. If you yell fire in a packed theater, people will be trampled to death, okay. So, in a sense, then, law is law, but they are thinking behind and all say you cannot expel your free speech on a crowded theater and while getting protection, but the people are getting their idea of running away from the theater. So, the First Amendment is great but, to a certain extent, there is a limitation of how far you can go in the First Amendment.

Furthermore, when you go outside the United States, we answer to a higher authority. We are not narrowly focusing on the United States' First Amendment and so on. When you go outside to the world, we have a higher authority and say we have to be tough on the standard of those, because tobacco really kills other people, not just American people but Chinese people, European peoples, and so on. So we have to put our mindsets

saying forget about First Amendment but, when we go outside the United States, we (inaudible) in the world saying there's no First Amendment. We just want to ban it in the world. That's a tough thing. That's it.

Dr. Thomas Novotny

Thank you very much, gentlemen, and we'll move to this next table for speaker number 28.

Linda Civitello-Joy, Executive Director of the American Lung Association of San Francisco and San Mateo Counties

I'm Linda Civitello-Joy, the Executive Director of the American Lung Association of San Francisco and San Mateo Counties, and I thank you for this opportunity to speak to you. I've worked with the American Lung Association for 18 years, either as a volunteer or staff member, and during this time, we've won many battles in the fight against lung disease. But the ones that have been the most evident to all of us here in California have been the bans on smoking in the workplace. As someone who personally suffers from asthma and allergies, as well as my children, I know firsthand how secondhand smoke can trigger an asthma episode. For this reason, today, I wish to focus my remarks on environmental tobacco smoke.

I wholeheartedly support an effective and enforceable Framework Convention on Tobacco Control that holds the tobacco industry accountable. The World Health Organization is to be commended for initiating the first treaty on tobacco control and for recognizing that we are on the verge of a global pandemic of tobacco disease and addiction. Environmental tobacco smoke, a combination of side stream smoke given off by smoldering cigarettes and mainstream smoke exhaled by smokers, ETS can be hazardous to the health of all people, even those who do not smoke. In the U.S., an estimated 3,000 lung cancer deaths per year in nonsmokers are caused by ETS, and it may be responsible for the annual onset of between 8,000 and 26,000 new cases of asthma.

Children are especially powerless to control their exposure to ETS, and yet, they are the group most adversely affected. The WHO estimates that 40 percent of children under the age of 14 worldwide, a total of 710 million, are exposed to ETS at home. Exposure to ETS early in life, while the lungs are still growing, can affect normal development and increase the risk for both acute and chronic respiratory illness. The Framework Convention should take action to reduce exposure of adults and especially children from ETS.

The Chair's draft calls for implementation of legislation and other effective measures at the appropriate governmental level that provide for systematic protection from exposure to tobacco smoke in indoor workplaces, enclosed public places, and public transport, with particular attention to special risk groups, such as children and pregnant women. While I am pleased that the issue of environmental tobacco smoke is addressed in the Chair's Text, it does not go far enough in protecting public health. I urge the U.S. to push for inclusion of language that would ban smoking in public places, including workplaces, public transport, schools and childcare facilities, hospitals and health facilities. Language that calls for systematic protection from exposure to tobacco smoke is not strong enough. A total ban on smoking in these places is called for.

Locally, we have enjoyed the benefits of bans on smoking since the mid 1990s. I'm sure that those of you who traveled here today from out of state enjoyed the clean indoor air at SF International Airport and noted the lack of tobacco smoke in restaurants and bars. The local tobacco control coalition worked for many years to have these bans become law. We know from experience that any vagaries in the law will be the loophole opportunities that will be used to allow continued smoking in areas intended to be smoke free.

The WHO has addressed many of the issues related to regulation of environmental tobacco smoke in the document *Policies to Reduce Exposure to ETS*, report on a WHO Working Group Meeting in Lisbon, Portugal in May 2000. The report suggests laws and regulations are essential to provide protection against involuntary smoking. Since there is no evidence for safe exposure level, legislation limited to ventilation design and standards cannot achieve smoke-free workplaces. The enforcement instrument should be created and administered by health, occupational health and safety, and environmental agencies. Action at both national and sub-national levels to develop and enforce legislation or regulations is important and mutually reinforcing. The model of local or grassroots legislation, for example, city bylaws, has proved very effective and should be encouraged in countries where this is possible. In countries where action cannot be taken locally, the focus should be on national legislation.

This level of detail is needed in the Framework Convention to ensure that tobacco smoke can be effectively controlled. Thank you for your attention to this matter.

Dr. Thomas Novotny

I thank you very much and, now, speaker number 29.

James Howard, Member of Board of Directors, American Lung Association

Thank you. Good morning. I'm Jim Howard, a member of the Board of Directors of the American Lung Association. I am also a career public health official with the State of California. I'm delighted to speak on behalf of the American Lung Association for an effective and enforceable Framework Convention on Tobacco Control. The American Lung Association will submit detailed written comments to the Department of Health and Human Services regarding the Chair's draft text of the Framework Convention on Tobacco Control. We also appreciate this opportunity to testify.

The American Lung Association strongly supports an effective Framework Convention on Tobacco Control. It supports the provisions banning duty-free sales, eliminating misleading labeling such as low-tar, and increasing the efforts to reduce smuggling. However, the Lung Association has a number of concerns regarding the Chair's draft text. We oppose the weak

advertising and trade provisions, because they are bad public health policy. These provisions must be changed.

Today, I will focus my comments on the critical issue of trade. To be effective, the Convention must address international trade issues. Tobacco is unlike any other consumer product. It kills when used as intended. Globally, tobacco claims 4 million lives every year, a number that, if we do not act, will increase to 10 million by the year 2010.

The American Lung Association supports strong language in the Convention that ensures that the interests of public health always prevail over the interests of trade. The protection of public health must be a priority in trade negotiations related to tobacco. Public health must not be jeopardized by efforts to maximize trade.

The Chair's draft language regarding trade is unacceptable. It states tobacco control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade. The Lung Association respectfully requests that this language be stricken. Preserving the proposed language would endanger public health. Nations would have the burden of proving that tobacco control measures are not arbitrary and

unjustifiable. Although this may sound reasonable to lay ears, in international trade jargon, these terms are unduly restrictive. They would put the burden of proof on those who want to protect public health, as opposed to those who seek to expand tobacco's deadly reach. They might also subordinate tobacco control measures to international trade rules that favor commercial over public health concerns. One consequence of this language may be to stymie innovative tobacco control programs.

The United States' past record on this issue is deplorable. In three Asian economies that opened their markets in response to trade pressure during the 1980s, namely Japan, South Korea, and Taiwan, consumption of tobacco per person was almost 10 percent higher in 1991 than it would have been if these markets remained closed. The United States, as home of the tobacco giant, Philip Morris, has an obligation to protect the world from tobacco addiction. Neither the United States nor any nation should use its economic power to expand tobacco markets and unduly promote tobacco use, addiction, and death. The FCTC should support countries pursuing tobacco control measures, without regard to international trade rules. The Convention should prevent a state from using retaliatory trade practices to expand its tobacco market. Further, tobacco should be excluded from international trade and investment agreements.

The Framework Convention on Tobacco Control provides an opportunity for the United States to provide leadership in the quest for effective global solutions to tobacco use and the harm it does to millions of people worldwide. We urge the United States to negotiate the treaty from a public health perspective and delete the "arbitrary or unjustifiable" language that concerns itself with trade, not with public health.

The vision of the American Lung Association is a world free of lung disease. A strong and effective Framework Convention would go a long way to make that happen. Thank you very much for this opportunity to speak.

Dr. Thomas Novotny

Thank you. Now, speaker number 30.

Paul Knepprath, Vice President, Government Relations, American Lung Association of California

Good morning. My name is Paul Knepprath. I'm the Vice President for Government Relations for the American Lung Association of California, and thank you for the opportunity to speak before you today. I'm going to focus my testimony on the need for the Convention Framework to include provisions that

hold the tobacco manufacturers and their surrogates accountable for the deaths and disease caused by tobacco.

The American Lung Association urges the U.S. delegation to support the recommendations of the Committee of Experts' Report on "Tobacco Company Strategies to Undermine Tobacco Control Activities of the World Health Organization." This report, published by the WHO in July 2000, revealed that the tobacco industry has been waging a vast, sophisticated, and secret campaign to undermine efforts by the WHO to combat smoking around the world. This detailed 240-page report was compiled by a committee of experts, and its conclusions are based on the analysis of thousands of pages of industry documents, which have become accessible in many of these recent court cases.

So, we urge the U.S. delegation to support provisions that incorporate the committee's recommendations to do the following: (1) Conduct ongoing monitoring of tobacco industry political activities and affiliations and to issue regular public reports on any continuing misconduct; (2) To ensure any connections between delegates to the World Health Assembly or negotiators of the Framework Convention and the tobacco industry are made transparent; and (3) To ensure adequate funding for WHO and Member States to carry out these above activities.

We believe these recommendations are critical to ensure that the tobacco industry does not continue to undermine tobacco control efforts around the world. The tobacco industry will claim that they have a role to play in the development of the treaty. Plain and simple, the tobacco industry should have no role whatsoever, formally or informally, in the development of the Framework Convention. It is precisely because of the enormous public health consequences perpetuated by the products they manufacture, promote, and sell that the WHO initiated this particular Framework Convention. Tobacco companies here or abroad have no interest in advancing the purposes of the Framework Convention. The tobacco interests in this process are served by the development of a weak treaty and, therefore, their goal is to dilute, obfuscate, delay and ultimately to prevent the development of a strong Framework Convention. We know too well the intentions of the industry, because we have long observed their behavior in California and across the country. They have spent millions of dollars directly and through their front groups, fighting public policies and programs aimed at reducing tobacco use and protecting nonsmokers from exposure to secondhand smoke.

Just a few examples of the cases in California, and there are many, many, many others beyond those that I'm going to

mention right now. The tobacco industry spent \$22 million against a statewide initiative, Proposition 99, in 1988, that would have raised and did raise the state cigarette tax to fund tobacco control, tobacco-related research, and health care programs in the state. They spent \$18 million to pass their own so-called "statewide smoking restrictions" initiative in 1994 which would, in fact, have repealed California's strong California Smoke-Free Workplace Act, the nation's most comprehensive clean indoor air law. And this restrictions initiative would have also preempted local tobacco control laws. They've spent millions of dollars in the last decade to prevent and overturn local clean indoor air ordinances and to provide campaign contributions and that make lobbying expenditures in the California legislature, all aimed at delaying, weakening, repealing tobacco control laws, including the Smoke-Free Workplace Act, which I mentioned and its most recent provisions on smoke-free bars, taverns, and gaming facilities.

In carrying out these efforts against tobacco control, the industry has directly campaigned and lobbied and has sponsored the activities of several front groups, and I'm only going to name a few: The National Smokers' Alliance, the California Business and Restaurant Alliance, the Californians for Statewide Smoking Restrictions, Californians for Fair Business Policy, and

other good guy-sounding organizations that deny the public the true source of funding or sponsorship of the industry. It's because of these political activities, both direct and hidden, that we strongly urge the Framework Convention to include tobacco industry disclosure language. There should be provisions to monitor the activities of the tobacco industry, its advertising and promotion practices, its political contributions and lobbying expenditures, its joint ventures, its link to smuggling, its interference in public policy, and its misrepresentation of the addictive nature of nicotine.

We also urge that the Chairman's draft language be strengthened considerably regarding assistance to developing countries. The Lung Association believes that the treaty should establish a global tobacco control fund to assist developing countries signing the Convention to fully carry out their obligations. Such a fund should have both bilateral and multilateral funding mechanisms, as well as a financing structure secured from a fee assessed all tobacco companies operating in the global marketplace.

Dr. Thomas Novotny

And, now, I must ask that you conclude. Thank you

Paul Knepprath

I appreciate your support.

Dr. Thomas Novotny

Okay, these folks can step down, and we'll start back with number 31. Oh, wait a minute, before you do, we may have questions from this side. I forgot to ask my colleagues. Any questions on this side? Now, speaker number 31.

Sara He, Legislative Aide to Supervisor Sophie Maxwell, San Francisco Board of Supervisors

Good morning, and thank you. My name is Sara He, and I'm a legislative aide to Supervisor Sophie Maxwell, a member of the San Francisco Board of Supervisors. The Supervisor has always been a passionate advocate of public health issues, especially when it comes to youth and women. She understands the urgency of today's hearing but, unfortunately, she's tied up in meetings and asked that I read this statement on her behalf.

First off, I would like to welcome the U.S. delegation to San Francisco and thank them for their commitment to the public. I would also like to extend my sincere appreciation to the San

Francisco Tobacco-Free Coalition for their endless tobacco control efforts. Today, tobacco has become a global epidemic. Soon, it will become the leading cause of death worldwide, causing more deaths than HIV, maternal mortality, automobile accidents, homicide, and suicide combined. By the year 2030, 10 million people will die, with over 70 percent of those deaths occurring in developing countries. This global epidemic definitely needs a global response.

Because the Framework Convention on tobacco control will be the world's first legally binding agreement focusing on global tobacco control, it is imperative that the language of the Convention is not only comprehensive but also compelling, especially in areas like tobacco advertising and trade. Despite industry denials, studies have shown that advertising increases consumption and appeal to young people. The current draft language of the Chairman's Text prohibits all forms of direct and indirect tobacco advertising, promotions and sponsorships targeted to people under the age of 18. This language is unacceptable because it will allow the tobacco industry to continue its aggressive marketing tactics by claiming that all of its advertising is aimed at adults, a claim that they already make.

Tobacco advertising glamorizes and legitimizes tobacco use. It increases social and peer pressure among young people to use tobacco products and creates a false impression that tobacco products poses no significant health risk. As a result, tobacco advertising overwhelms the efforts made to educate youth about health effects of tobacco use. The FCTC must include strong provisions banning tobacco advertising, promotion and sponsorship.

It is a fact that tobacco is addictive and, because of this fact, tobacco cannot be subjected to the same trade agreements and rules as any other product. The current language of the Chairman's Text contains a guiding principle that states that the tobacco control measures should not constitute a means of arbitrary or unjustifiable discrimination in international trade. This language definitely needs to be removed and replaced with language that states the FCTC will take precedence over international trade agreements.

I thank you for the opportunity today and hope that you would accurately present the public's concerns and views when you return to Geneva next month.

And, if I may, Mr. Green, I actually would like, on a personal level, to answer that question you had to Jonathan from CPA regarding the one-third estimation of women who will die from tobacco-related uses. I believe that sort of - that estimation was based on studies shown in South Korea back in the 1980s when U.S. trade sanctions forced some of the Asian countries to open their tobacco markets, particularly South Korea. Because of that one-year open market there and aggressive advertising of tobacco industries, young women's smoking rates quadrupled from nearly 1 percent to a like 8.3 percent. And I think it was based on that study that they came to the conclusion that it will happen, too, to China, and eventually one-third of women in China will die from tobacco use. Thank you.

Dr. Thomas Novotny

Speaker number 32, please.

Kirk Kleinschmidt, Co-Chair of the San Francisco Tobacco Free Coalition

Hi, my name is Kirk Kleinschmidt. I'm Vice President of Advocacy for the American Heart Association, Western States Affiliate. I'm also co-chair of the San Francisco Tobacco Free

Coalition, and that's the hat I'm wearing today to make this statement.

San Francisco has been able to make great strides in reducing tobacco use from 21.9 percent in 1990 to 17.7 percent in 1998. Youth smoking rates in California have decreased from 9.1 percent in 1990 to 6.9 percent in 1999. California now has the lowest smoking rate of any of the 50 states, with the exception of Utah. This major change could not have been possible without ongoing funding for a comprehensive tobacco control program that includes tobacco control policies. Funding for implementation of tobacco control programming is essential, and the San Francisco Tobacco Free Coalition urges you to strengthen the language in the Chairman's draft on this issue.

California has been remarkably successful due to the state's tobacco tax, which was passed by voters in 1988, and has funded a model for comprehensive tobacco control program. In addition, San Francisco has benefited from Master Settlement Agreement funds for tobacco control.

In California, when the state tobacco funding levels were severely reduced in 1993, we saw a steep rise in smoking, particularly among youth. Once funding was restored, the

smoking prevalence was again dramatically reduced from 12.1 percent in 1995 to 6.9 percent in 1999. A study published in the *New England Journal of Medicine* in December found that 8,300 more people died as a result of this funding cut than would have been expected had the California program funding level remained high.

The draft language in the Chairman's Text provides for a voluntary mechanism for the provision of financial resources on a grant or concessional basis to developing countries. Tobacco exporting countries, such as the United States - home to the largest multinational tobacco company, Philip Morris - has a special responsibility to provide financial and technical support to countries with few resources, but this support must be obligatory. Furthermore, a global tobacco control fund should be established, to which tobacco companies are obligated to pay. Thank you very much.

Dr. Thomas Novotny

Thank you, sir. Speaker number 33 please.

Alma Zavala, Youth Activist, Youth Health Organizing Project
from Mission Housing Development Corporation

Hi. I know that you do not have a copy of my speech, so I would like your full attention. My name is Alma Zavala. I am 17 years old, and I'm a youth activist here in San Francisco with the Youth Health Organizing Project from Mission Housing Development Corporation.

I am going to talk about the total advertising ban. My problem is with the so-called direct and indirect total advertising for everybody under the age of 18. I am sorry, but we are not stupid. The tobacco industry influences language so that we can get off their back, but guess what? We are not getting off your back until you take out the part, and I quote "targeted at persons under the age of 18." Who is to say what type of advertising is going towards the youth and which ones are going to the adults? You know that the tobacco industries are going to keep the advertising the same and say that it is all going towards the adults, not the teenagers.

You are saying that the indirect advertising is going to be eliminated, yet the In Sync concert coming up is being sponsored by Chips Ahoy which, we all know, that is owned by Philip Morris. What is this? The tobacco industry is targeting

teenagers straight up without them even knowing. What a shame. So, we demand a full advertising ban of all forms of tobacco advertising. Stop the killing and targeting of youth all over the world. Thank you.

Dr. Thomas Novotny

Thank you very much. Speaker number - excuse me. Questions? John.

John Sandage

It's my usual question. Speakers 31 and 33, you've asked us to go to Geneva to support a worldwide ban on tobacco advertising. Can you offer us any basis under the First Amendment of our Constitution that would allow us to support that position, in light of the interpretation that the courts have given to the protections for commercial speech?

Sara He

Speaking on a personal level, I definitely am not an international law expert or even an expert on the Constitution, but I am definitely offering my hands as to help you guys find a

solution and to actually advocate for the public concern in regards to having an all-out ban on advertising.

Alma Zavala

What I understand for the First Amendment is that it is true that you are allowed to advertise, is that correct? But, I don't think that you are allowed to kill people and, you know, the way of advertising, you are practically saying, you are, you know, come and kill yourself. That's practically what tobacco companies are doing, from my point of view.

Dr. Thomas Novotny

Thank you. Yes, Larry?

Larry Green

If you could help me locate the study you referred to from Korea, I'd very much appreciate that. Thank you.

Dr. Thomas Novotny

Any questions? Okay, thank you very much, and we'll move now to speaker number 34.

Ebony Mattis, Youth Activist, Mission Housing Development Corporation; Youth Health Organizing Project

Hi, my name is Ebony Mattis, and I am a youth activist with Mission Housing Development Corporation. I'm with a youth group called Youth Health Organizing Project. And I am here to talk about trade. The U.S. government should support a ban to remove tobacco - should remove and exclude tobacco products as an item of trade. Classifying tobacco as a trade item is protecting a drug that kills 4 million people a year.

Dr. Thomas Novotny

If I could just interrupt for one second, I see our other folks here are leaving. I just wanted to thank all the young people who came and probably had to take time out of their school day to do some of this testimony, and I want to just take a minute to thank you and all of the others at the same time before you leave. Thanks. (Applause) Please continue.

Ebony Mattis

As a youth living in the U.S. and on behalf of all youth, we demand a ban to remove tobacco as a trade item. Again, we demand an end to the import and export of death. Thank you.

Dr. Thomas Novotny

Thank you. Speaker number 35. Thank you.

Lillian Boctor, Mission Housing Development Program

Good morning. Thank you for having us all here today to share our ideas with you. And, Chairman Novotny, I'm sure, maybe you remember Ebony. She spoke in front of you all in Chicago at the World Conference on Health and Tobacco. And, I coordinate the youth group at Mission Housing with funding from the Tobacco Free Project.

Dr. Thomas Novotny

Please identify yourself as well.

Lillian Boctor

My name is Lillian Boctor with Mission Housing Development Corporation. And the youth in my program have been very interested in the development of FCTC, especially about the total advertising ban. Our organization has written a resolution in support of a strong and binding FCTC.

Today is International Women's Day, and today is a day to celebrate women and to reflect on the state of women in our increasingly connected and intertwined societies all over the world. The reality is that 3 out of every 5 women in this world live in poverty. Women disproportionately carry the burden of poverty, lack of adequate health care, violence, abuse, inequality, and disenfranchisement. And women have also increasingly become the targets of aggressive advertising campaigns by multinational corporations worldwide, viewing them as a fertile market to increase their sales and profits.

The tobacco industry is actively participating in this advertising frenzy, targeting young women here in the United States and all over the world, especially in countries where the smoking rates among women have been historically low, and is now steadily rising, as you've heard from other people who've spoken

here today. So, add another burden to women on a global level, increasing disease and death due to cigarettes.

The draft language of the Chairman's Text, which prohibits all form of direct and indirect advertising and targeted at persons under 18, is weak, and it's ineffective. It's vital for the health and well being of women and people all over the world that a total advertising ban be included in the FCTC. The tobacco industry has been claiming for years that they do not advertise to youth, and this is an outward lie. The slick promotions and sponsorship of sports events, music concerts, and enticing ad images slip into the minds and desires of young men and women everywhere. This influences them to smoke and become addicted to cigarettes at a young age, destroying their lives and the lives of future generations. This tragedy will not change with the current Chairman's Text language. It is the U.S.'s responsibility to implement and advocate for a strong and binding FCTC treaty and, along with all the youth I work with, we demand a total advertising ban.

I would like to show an example from El Salvador. We work with a group in El Salvador and, this right here, this Marlboro box, it was passed out to all San Salvador residents by Philip Morris under their door on December 26, 2000. So, thousands and

thousands and thousands and thousands of houses all over San Salvador received this. This could be something that could be classified as advertising targeted to people over 18, but this reached the hands of thousands of youth, which they probably used as a toy and a plaything, especially among impoverished youth in El Salvador. And, to me, this is an example of how the Chairman's language is not strong and would not protect youth from tobacco companies' aggressive targeting and advertising towards youth.

And I'd also just like to respond to Mr. Sandage's concern about the free speech in the First Amendment. Commercial free speech is different than political free speech, and maybe I'd like to hear from you about what's been proven in court because, to my understanding, this still hasn't been proven in court. And I think it is a different animal. And, also, we'd just like to say we'd like to work with you to figure out ways to implement a total advertising ban. Most of us are not lawyers. We work in community-based organizations, so we would like to come up with solutions together to deal with this. And, maybe, after we speak, if you can respond about what has been clarified in court about commercial speech versus political free speech. Thank you.

Dr. Thomas Novotny

Thank you. Speaker number 36.

Uzoma Evuka, Alameda Tobacco Control Program

Thank you the delegation. My name is Uzoma Evuka. I'm with Alameda Tobacco Control Program. I'm speaking on behalf of the tobacco settlement issues, and a lot has been said about statistics that show the effect of tobacco, not only in the United States, but globally. And, my speech here is to implore this delegation, when they go to Geneva, that whatever resolutions that are taken within the United States and other developed countries of the world should be equally applicable to developing countries, not only in Africa but in other parts of the world. And, no doubt, most countries - most developed countries - don't have any regulations, federal, statewide or otherwise, that control the effect of tobacco industries, especially from developed countries in these countries of the world. So, I wish to applaud this delegation that whatever is the criteria used in developed countries to control the effect of tobacco, generally and globally, should be applicable to other developing countries, especially those that have no policies whatsoever. And I want to advocate that whatever

criteria the United States has used or states in the United States have used to reach a master settlement from the tobacco companies to take a position for the effect of tobacco should be used as a global plan to set up global development for other countries to deal with the effect of tobacco globally. Thank you.

Dr. Thomas Novotny

Thank you, sir. Are there any questions from the panel?
Thank you very much.

Male Voice

Can I ask him a question?

Dr. Thomas Novotny

We had announced at the beginning of our session that we weren't going to be taking questions from this side, because this is a hearing where we want to listen to you. However, we will, after a break here around the noon hour, have a chance afterwards to have some dialogue, and we would invite you to stick around if you can for that. But, we feel we must finish

this testimony first. Thanks. Speaker number 37. Somebody left a camera up here, by the way.

Ross Hammond, Public Health Consultant

Good morning. My name is Ross Hammond. I'm a public health consultant based here in San Francisco. Welcome all. And this morning just want to talk very briefly about a very specific issue, which is smuggling, within the FCTC. As you've all heard, the scope of the cigarette smuggling problem is enormous. Over one-third of all global cigarette exports are never accounted for as legal imports. And tobacco smuggling, as someone said earlier, is more than just an economic or law and order issue, it has major public health implications. It undermines tobacco tax and price policies, which have been proven to be one of the most effective public health policy tools available to reduce smoking, especially among young people. Moreover, the specter of smuggling, exploited by the tobacco industry whenever a tax increase is proposed, often succeeds in convincing lawmakers that tax increases will spark smuggling and lawlessness. This argument is specious, according to the companies' own internal documents, because the industry itself is a major factor and participant in tobacco smuggling. Moreover, smuggled cigarettes are sold at a discount to price-

sensitive smokers, who usually are young initiators or price-sensitive smokers who might otherwise quit. Finally, the resultant loss of revenue available for tobacco control has been affected either by smuggled products or the forbearance from raising taxes.

The FCTC negotiations offer a unique opportunity to take concerted action on this problem. Moreover, while governments may debate some tobacco control measures, most will agree on the importance of taking forceful action against smuggling. Existing international measures designed to reduce the illegal trade of pharmaceutical products, alcohol and firearms provide strong precedence for such an agreement.

In order to adequately control smuggling, two types of provisions would be necessary, those imposing obligations on parties to enact domestic law provisions to prevent smuggling, such as counterfeit-resistant chain of custody markings on all packages and cartons, place of sale designation on the package, licensing of the entire manufacturing, retail, and exporting network; and those requiring cooperation between countries and with other international organizations, which would include information sharing, monitoring, and investigating suspected smuggling activities, judicial proceedings, prosecutions, and

extradition. The Chair's Text contain many of these provisions that we believe should be included in a comprehensive package of restrictions to control smuggling.

But in addition to those included in the Chair's Text, we'd also like to see several additional provisions. Parties to the Convention should permit other parties who are final destination recipients of tobacco products to collect all their national and subnational tobacco taxes directly from the manufacturers and exporters in the country of origin. If the taxes are paid before the product leaves its country of origin, there's reduced incentive for the companies to divert the shipment. Secondly, parties should be required to mandate the placement of the importing country's tax stamp under the cellophane on the package and require that all packages meet the importing country's requirement. That tax stamp would serve as an additional package marking to indicate the product's intended destination. Finally, the Convention should require that parties hold the manufacturer or exporter, usually the tobacco company, responsible for ensuring that its product is ultimately sold legally and be liable for damages if the product ends up on the black market. The original exporting company would pay duty plus fines on any seized contraband. This means they would have to secure the distribution chain and refuse to supply

wholesalers or importers that could not guarantee safe onward sale. By passing liability for excise losses up the distribution chain to the initial exporter, a liability regime would effectively pass a duty of care down the distribution chain. This sort of regime is not unprecedented, as it forms the basis of the United Nations' environment program, Basel Convention, on trans-boundary movement of hazardous waste, which has a protocol in liability and compensation. Thank you.

Dr. Thomas Novotny

Thank you very much. Are there questions for this last speaker?

Male Voice

If you taxed before the product leaves the country, you're arguing that that will take away the incentive to divert the product into smuggling channels. Doesn't it just provide a greater incentive to hide the production of the cigarettes?

Ross Hammond

Well, I think it's very hard for most manufacturers to hide. I mean, you will have, I'm sure you'll have some pirate manufacturers, but we're talking on a scale. I mean, the scale of most cigarette manufacturing plants is enormous, so you would get most of it. Obviously, no solution will cover 100 percent, but I think, for the major manufacturers, it would also give them an incentive to put pressure on smaller manufacturers.

Male Voice

And your recommendations apply to the gray market cigarettes, the ones that are being sent out and brought back?

Ross Hammond

Well, I think that would actually help reduce some of the gray market trade.

Male Voice

Will you be giving us a written version of -

Ross Hammond

Yes.

Dr. Thomas Novotny

Any other questions? Okay, that was the last speaker who requested time this morning. There's at least one other person who was not able to come until the early afternoon. And so we will resume at 1:00 to hear that one last speaker and then, subsequently, to have an open session where we'll have some time for some dialogue and back and forth, as we announced early this morning. And, just to reiterate a couple of things that I mentioned at the beginning of this, this is an important arena for us to listen to public comments on the current draft document for the Framework Convention on Tobacco Control. We represent an intergovernmental process of several departments of government that ultimately develops positions, which we present in Geneva. We will certainly take into account the information that has been presented here to us today. I think you've already heard some of the concerns that are rather common and significant, and these concerns will continue to be explored, but we do take your comments very seriously and appreciate the opportunity to hear them. The process is going to go on for

another couple of, rather, at least until 2003, according to the schedule the WHO has sent out, and we do anticipate that there'll be additional opportunities for input as the documents develop and are modified over the next negotiating sessions.

And, so, at this point, I guess we'll adjourn. I'm wondering, maybe, since it's actually quite early, what do you folks think about doing our dialogue now rather than wait until later? You know, we would actually invite now this opportunity for dialogue now, since you're all here, so you don't have to go away and come back. And, this portion will not be recorded. There will be no written comments that will be necessary from you, but we will open, so that the opportunity to have some interaction with you on an informal basis. So, what I'd like to do is turn off the recording.

(End of Tape 4)

Dr. Thomas Novotny

So, we're officially in business again. I want to welcome those of you who returned for the afternoon session of our public commentary, and I would like to reiterate a few of the comments that I made this morning as we began our discussions.

My name is Tom Novotny. I'm Deputy Assistant Secretary for International Health. I lead the delegation to the Framework Convention on Tobacco Control, which is a WHO-sponsored deliberation on an international agreement on tobacco control. We had a full morning of public commentary, and we invite the remainder of those of you who are interested to present your testimony, your commentary. This is limited to 5 minutes. We will time you, and at 1 minute, you'll see the timer show a yellow light, and I will cut you off at the end of 5 minutes. Your comments will be recorded both on the tape and, if they are in written form, preferably electronic form, we will incorporate them onto a website that the CDC sponsors.

For those of you who didn't hear the introductions of who we are, this is members, not all of members, but most of the members of the U.S. delegation to the Framework Convention. I lead the delegation. To my left is John Sandage, from the State Department. To his left is Leslie Simon, from the Department of Commerce. To my right is Larry Green, from the Centers for Disease Control and Prevention, an HHS agency who is the lead agency on tobacco control health issues. And, to my far right is Tamara Light, who is with the Bureau of Alcohol, Tobacco, and Firearms of the U.S. Department of Treasury.

And, so, we'll go ahead and begin. And, I think we have, you're going to, right, we have two, I think that's it? Okay, so we have two individuals. You're welcome to come to the table now. You're number 38.

Carel McGruder, Project Director of the San Francisco African American Tobacco Free Project

Hi. Good afternoon. Sorry to make you come back from lunch just for two people, but anyway, my name is Carel McGruder, and I'm the project director of the San Francisco African American Tobacco Free Project. And we are a community capacity building project here in San Francisco, and we also advocate on behalf of African American people and people of African descent all over the world.

I'm going to talk about the global framework, but I also want to just talk about the impact of the issues of tobacco on my community, that when we lose 40,000 African Americans a year to tobacco-related illnesses who are elders in the - anchors to our families, and that when our families lose that anchor, that a lot of times we get into a downward spiral of intergenerational harm from all of the other issues that impact us in this country. And, I would like that to be taken into

consideration when you, as a delegation, come together to form the official U.S. position.

And now I'd like to talk about some the international issues. We are, as my coordinator talked about earlier, we are buddied with a group in West Africa and Senegal, and we have first-hand information and documentation on some of the practices of the tobacco industry in west Africa. As things have tightened down here and in Europe, they have with impunity gone to developing countries, and they do whatever they please over there, even though the corporate image here for America is that they've changed, and they wouldn't do the practices that they have historically committed on us in the past.

So they have aggressively expanded the markets by employing manipulative and deceptive advertising and marketing techniques. We have actual photos of these practices that include sample giveaways, advertising without respect to proximity to schools or parks. There's been a calculated assault on west African culture and a deliberate undermining of the cultural fabric of their lives. They target women, which is very mal-viewed for women to smoke there, which leads to, can lead to breakdowns of families. And the place that the African woman has in her culture is being undermined.

We would like our delegation to lobby and help to establish a mandatory tax fund that would not be just voluntary, which is what's been talked, but to be mandatory, that would directly fund tobacco control programs in developing countries, even bypassing governments as we have seen, that even within our state of California, that they will bypass even when voters mandate certain sanctions. The politicians bypass those and take the money and do what they want with it, sometimes for things that are needed also. We want the programs to be contracted independently, and that this will ensure that the tobacco control funding is used for tobacco control activities.

And we would also like there to be a provision within our U.S. document, a position for dissension to be registered by public health groups, if we do not agree with the official U.S. position, once it gets back to the White House and the powers that be, because some of this is obviously out of your hands as well. So we would like a provision within the document so that groups can register dissent, so that when the countries get together, they can see whether or not it's representative really of the will of the American people. Thank you very much for your time.

Dr. Thomas Novotny

Thank you. We may want to ask questions at the end of this, so I would invite you to stay with us for a bit longer, if that's okay.

Jeremiah Mock, Researcher, University of California in San Francisco

My name is Jeremiah Mock, and I'm a researcher at the University of California in San Francisco. And I've conducted most of my research in Thailand, looking at the effects of tobacco promotion on Thai society and, specifically, among working class people and young people. And my comments of today, you'll forgive me if they're repetitive of the some of the things that you've heard this morning. But I want to emphasize the point that it's critical that the U.S. delegation play a lead role and also a genuine role in this process, because our government and our society have a huge debt to pay for the rest of the world for our power efforts to export an industry of cancer and other important diseases to the rest of the world. And we, as a society, are beginning to realize the impact of tobacco use and the impact of the tobacco industry's practices in our own society, and I think we owe a moral debt to other societies to treat the tobacco issue with parity. That's

to say that to make sure that aggressive actions that we're taking in the United States are paralleled with actions that we support and that we try to see implemented throughout the rest of the world.

In particular, with respect to the FCTC, I haven't had a chance to review all the details, we know that the formulation of the American Legacy Foundation, as one part of the Master Settlement Agreement in the United States, has been an important source of funding to begin to unravel and to reduce the impact of tobacco in our own society. And, I would strongly advocate that the United States take a position to see a similar entity created as a result of the FCTC process, namely a Global Legacy Foundation, if you will; that is to say, an entity that the tobacco industry will commit to supporting at very high levels, that provides a funding mechanism so that people in other countries that don't have the kind of income that we have in our public health system can begin to address the legacy of the tobacco industry's practices and of tobacco broadly in their own societies.

And I wanted just to follow the comment that, you're a representative from Justice, the Justice Department, is that correct? State Department. With respect to your comments about

the consent decree. I gather that people earlier in the day have made comments about advertising. It seems to me that if the tobacco industry is willing to sign a consent decree to give up certain rights for advertising in the United States, and they feel that is a business practice that they can live with, that they certainly should be able to sign a similar consent decree with respect to advertising throughout the rest of the world. And that's a point that I think should be addressed squarely in the FCTC negotiations.

We have a precedent here in the United States. In fact, our protection of free speech and liberty is, I think we would all agree, what is the underlying basis for this kind of conversation and forum today. But we have to recognize that those kind of protections don't necessarily exist in other countries. And, in many ways, the tobacco industry can operate without any of the constraints that we enjoy, that both protect liberty but also don't allow people to abuse the liberty that they have to speak as they will. And I think this is particularly important with respect to the tobacco industry's efforts in Asia, because we can see that very clear evidence, for example, in Japan, that the rapid rise of smoking among young Japanese women has coincided almost directly with the forced opening of the Japanese market for tobacco products. And

I do work in Japan and see the pervasive assault on young Japanese women by very sophisticated advertising campaigns that Philip Morris supports. And I think that there is a very strong relationship, because most of those young women are smoking Marlboro brands now, although the Japanese market offers plenty of other Japanese brands.

So, I'm sure that other people have talked about the importance of limiting advertising, and I think the precedent that the industry has already set forth (inaudible), namely, signing the consent decree to give up its right, should be the basis for limiting or doing away with advertising entirely throughout the rest of the world. So, I thank you for your time.

Dr. Thomas Novotny

Thank you. Are there any questions? I have one question. On the proposed - you called it a tax fund that would be used for supporting tobacco control activities, and that it would be mandatory. Could you elaborate a little bit on how that would be set up? Who would run it? Who would contribute to it? Any kind of details that you could provide on something like this because, on the surface, it sounds like, wow, it's a way of

funding tobacco control. Speaker 39 also mentioned this as something similar to the Legacy Foundation's fund that's available from the multi-state settlement, agreement rather. So, could you give me any details about your (inaudible)?

Carel McGruder

Well, what I was suggesting, it would be similar to this, that something be set up kind of like the American Legacy, except - and American Legacy has done a lot with what some of the provisions that they have, because they're not really supposed to say anything defamatory against the tobacco industry, and they still do. But, it would be a tax on cigarettes similar to what we have here in California, Prop. 99. There's a certain amount of money where cigarettes are taxed, and that money is put into a fund for tobacco control activities.

Male Voice

So, every nation who taxes cigarettes would dedicate a portion of -

Carel McGruder

But, particularly, the American companies.

Male Voice

No, no, no. This is an agreement between nations.

Carel McGruder

Right. That would be fine. Every nation, every package of cigarettes sold could have a tax on it that would go for tobacco prevention activities. And it can be based on, we do have a moral responsibility, I feel. We're a rich country, so countries that have an infrastructure wouldn't be allowed to get that money. Maybe, only certain countries, under certain level, would be able to apply directly to an agency that could be housed. I'm going to Geneva next week. I think of Geneva, but I would like to see that it be housed in a developing country, the headquarters for that, in Africa or in South America or there could be more than one.

Male Voice

Would it be a new agency?

Carel McGruder

It would be a new agency, yes. And, so, and that's something, first of all, we have to agree on the concept of it, but the details can come out later. That's something that can be worked out, but I would like to see a new agency with mandated funding levels that would go directly to tobacco control activities. So there would have to be some capacity building in different countries where this is a new type of activity that people are doing to get people up to speed, to be able to manage the grants. There'd have to be oversight, of course, but that it would be an indigenous experience, so it wouldn't be just western. I think we have a lot of expertise to give and technical assistance, but it would be the people themselves who are coming from developing countries who would be participating as equal partners to decide on what types activities would be funded. But, it would be particularly important to bypass the governmental agencies that are so easily swayed and corrupted by lobbying and political contributions so that the effort could stay true to what it's supposed to be

about. And that the money couldn't be, you know, if I'm deciding whether I'm going to spend money on AIDS or on tobacco control, even though I'm a tobacco control advocate, well, I might, would be tempted to spend that money on AIDS prevention. So, those are some legitimate concerns that developing countries have in terms of deciding how they're going to spend that money.

Dr. Thomas Novotny

Thank you. Any other questions?

Male Voice

Dr. Mock, you recalled the tobacco industry's voluntary withdrawal from the media, their consent not to continue advertising on broadcast media. What seemed to have made that happen was the prior determination that there had to be an exercise of the equal time provision. So, maybe that's the starting point for an FCTC intervention, something that calls upon governments to provide equal time for advertising as a wedge into this otherwise impassioned kind of situation we have on the advertising ban issue.

Jeremiah Mock

I appreciate some of the history in the United States about equal time. I think that, in many countries, that won't be a workable option. And I can speak specifically of knowledge of the situation in Cambodia where, effectively, the media is a state-owned enterprise - this is the broadcast media - and they have a somewhat undefined policy about providing equal time, but they face, or in practice, they behave in the similar way that we see broadcasters behave in the United States with respect to free time for PSAs, for Public Service Announcements, which are, of course, the only people that see those are the ones that are up at 4:00 in the morning. And so these equal time provisions in practice are, I think, not operational.

In the discussions that I'm aware of in Cambodia, one of the biggest issues that was raised in an inter-ministerial meeting about potential bans on advertising is the concern among the state-owned broadcaster about the loss of revenue from tobacco ads. And in Cambodia, they don't allow tobacco advertising until, I believe, 10:00 at night. So even in that window of time, just from 10:00 until maybe midnight, it represents a substantial part of their overall revenue. So broadcasters are going to be loath to give that up, and they may

in effect adopt equal time policies that aren't particularly operational.

And, in the end, the level of sophistication of the tobacco advertisers, through the caliber and quality of the ad agency support that they can buy, I think, will always outgun whatever the public health people can do, even on an equal time basis, because it's the quality of the content that is as critical as the time.

Dr. Thomas Novotny

Any other questions? We have one more speaker, number 40

Sangita Nayak

This will be quick. I just wanted to add, in my question earlier about WHO recommendations, I didn't actually get a chance to context it, so I just wanted to put three sentences about why we think adopting those recommendations are so important as you consider that. We just wanted to say that many governments have commented during the working groups and the first round of treaty negotiations that the tobacco transnationals have exerted undue political influence to prevent

or obstruct public health protections. In research conducted by INFAC, over 70 percent of countries surveyed have no laws requiring tobacco corporations to disclose their political activities. We urge the U.S. to advocate for FCTC that requires tobacco corporations, their subsidiaries, and agents to disclose lobbying activities and expenditures, including names of lobbyists and lobbying firms and political contributions. The aim should be to strictly limit the involvement of tobacco corporations in the development of legislation and public policy.

Philip Morris and its allies have also had a dampening effect on tobacco control legislation in virtually every region of the world and have launched a global lobbying effort to weaken the FCTC. The FCTC should bolster national public health policy against influence peddling by corporations that will profit from weak or no legislation.

Dr. Thomas Novotny

And, I would like you to state your name for the record, please.

Female Voice

Sure, it's Sangita Nayak from INFAC.

Dr. Thomas Novotny

Thank you very much. Any questions for the last speaker?
John has a question.

John Sandage

My question, I have two questions for you. Number one, do you think the industry has a right to be heard in the process? And, number two, do you think that the kinds of disclosures that you're advocating should apply to all interested members of civil society or only the industry?

Female Voice

Can you hear me? Yes, okay, good. In regards to your first question about does industry have a right to be heard, I think, from the release of those secret documents and from the WHO Committee of Experts Report, it's clear that the industry has been involved in obstructing legislation in many regions of

the world. I think that disqualifies them from having a real participation in this process. And as far as disclosure is concerned, where there isn't disclosure of their activities, in those countries, it's hard for NGOs to get an idea of how they're influencing or obstructing legislation in those countries. So, for the tobacco industry, I do think that this is a clear case where disclosure is something that should be required.

John Sandage

Okay, but my question was somewhat different. My question was, my second question, do you think that all members of civil society who are trying to influence the process, be they the tobacco industry or the growers or NGOs, should face an equal disclosure requirement, or what you're advocating only applies to the industry?

Female Voice

I think most of NGO activities around this have been disclosed, and NGOs have been pretty up front about what they've been involved in. And I think the industry, though, has not. And whether this is something that should be brought along to

every aspect of civil society, I'm not sure. I don't know if I can answer that question, but I do think that, from the WHO Committee of Experts Report, that it's clear that the industry needs to disclose their activities, since they've had so many years of obstructing this type of legislation and the WHO's efforts.

John Sandage

Thank you.

Dr. Thomas Novotny

Any questions? Well, I think that concludes the list of speakers, and we want to express our appreciation for your input. It's an extremely helpful part of this process. Democracy is an interesting and intricate process that we expect to have more interaction with all of you and that, as this Framework Convention proceeds, we'll have I hope other opportunities for public commentary sessions, especially when the draft document matures and is debated after this next negotiating session. So, again, thank you for your inputs, and these again will be recorded, and we'll take them into

consideration during our deliberations. And thanks to everybody who made this possible, and I think we're adjourned for the day.

(End of Tape 5; end of meeting)